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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

ORIGINAL APPLICATION NO. 446/95.

Monday, this the 30th day of August, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri J.L.Negi, Member (A).

Constable Antresh Kumar,
Through Mrs. Avnish Ahlawat,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi. ... Applicant.

(By Advocate Mrs. Avnish Ahlawat)

Vs.

1. Union of India through
Lt. Governor of Delhi,
Government of National Capital
Territory of Delhi,
Raj Niwas,
Raj Niwas Marg,
Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters,
M.S.O. Building,
I.P.Estate,
New Delhi - 110 002.
3. Shri R.P.Singh,
Additional Commissioner of Police
(S&T), Delhi Police,
Police Headquarters, M.S.O. Building,
I.P.Estate,
New Delhi - 110 002.
4. Shri R.R.Titkare,
Additional Dy. Commissioner of
Police (Security),
Security Lines, Delhi Police,
Delhi. ... Respondents.

(By Advocate Mr. Vijay Pandita)

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the
Administrative Tribunals Act, 1985. The respondents have
filed their reply. We have heard Mrs. Avnish Ahlawat, the
learned counsel for the applicant and Mr. Vijay Pandita, the
learned counsel for the respondents.

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2. The applicant was working as a Constable in the Delhi Police. It appears, on 23.12.1992 the applicant was on duty from 8 a.m. to 2 p.m. It appears, the reliever had not come though applicant's duty was over by 2 p.m. He was waiting to be relieved by another official and at that time the Additional Deputy Commissioner came there and saw the applicant wearing a jacket and a civil shirt over the uniform. Therefore, the officer found that the applicant was not wearing uniform, but was wearing some other clothes over the uniform when he was on duty and hence kept him under suspension. A charge sheet was issued against the applicant by the Additional Deputy Commissioner of Police Mr.Naresh Kumar. An Enquiry Officer was appointed and three witnesses came to be examined during the enquiry including Mr.Naresh Kumar. At that time, the administration noticed that there was some defect or irregularity in the proceedings since Mr.Naresh Kumar has initiated disciplinary action and he himself is the main witness in the case. Therefore, the earlier order for disciplinary enquiry was recalled and a fresh order was issued by another Disciplinary Authority viz. R.R.Titkare, Additional Dy. Commissioner of Police (Security). As per the rules of Delhi Police (Punishment and Appeal) Rules, 1980, the Enquiry Officer framed a charge against the applicant. The applicant's plea was recorded, who was pleaded not guilty. The applicant entered on his defence and examined two witnesses. Then the Enquiry Officer submitted a report dt. 20.9.1993 holding that the charge is proved against the applicant. The copy of the enquiry report was furnished to the applicant, who made his representation. Then the Disciplinary Authority by

order dt. 20.5.1994 held that the charge is proved and imposed a penalty of reduction of pay to one lower stage for a period of one year. Being aggrieved by that order, the applicant preferred an appeal before the Additional Commissioner of Police, who by order dt. 20.5.1994 confirmed the order of the Disciplinary Authority and dismissed the appeal. Being aggrieved by these orders, the applicant has come up with the present application.

3. It is alleged in the application that since it was winter and that too his work was over by 2 p.m. and since the applicant was not feeling well he was wearing civil shirt and sweater underneath the uniform. The applicant has denied the allegation that he was wearing a sweater and shirt over the uniform. When the Additional Dy. Commissioner of Police Mr.Naresh Kumar came there and questioned him about this, he wanted to explain, but the Additional Dy. Commissioner of Police did not hear him and proceeded to place him under suspension. It is alleged that in the deposition of Mr.Naresh Kumar, four sentences have been subsequently added. That there is violation of principles of natural justice in conducting the enquiry. That the enquiry is in contravention of Rule 16 of the Enquiry Rules. That the second enquiry conducted on the basis of the earlier evidence recorded in the case is null and void. Fresh summary of allegations and fresh recording of prosecution witnesses should have been done before framing charge against the applicant. That the charge was vague without mentioning the time at which the applicant was checked. Since the applicant had pleaded that his duty hours was over and

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being cold and suffering from fever he had worn shirt and sweater underneath the uniform, He has, therefore, not committed any mis-conduct. The impugned order of penalty is a grave penalty which affects postponing of future increments of the applicant. The applicant was checked at 3 p.m., whereas, the duty hours of the applicant was from 8 a.m. to 2 p.m. It is, therefore, submitted that the applicant has not committed any mis-conduct during the duty hours. Then the applicant prays that the impugned orders be quashed.

4. The respondents in their reply have justified the action taken against the applicant. The enquiry was done as per rules and applicant was given all opportunity to defend himself. The allegation of tampering with the deposition of Mr.Naresh Kumar is denied. Due to some legal infirmity the earlier order was cancelled and fresh order was issued by the Disciplinary Authority. It is stated that the version of the applicant that he had worn civil clothes since the weather was cold is also not tenable, since sufficient warm uniform consisting of big coat and jersey etc. are provided to all the subordinates during winter. It is mentioned that wearing anything apart from uniform is not allowed in the disciplined force. The respective authorities have considered the case of the applicant and have found that the applicant's defence has no merit. Hence, it is prayed that the application be dismissed.

5. At the time of arguments, the learned counsel for the applicant contended that the enquiry done is contrary

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to the rules and the proceedings conducted by the Enquiry Officer on the basis of the earlier evidence recorded by him is illegal. On the other hand, the learned counsel for the respondents submitted that there was no change in the allegation against the applicant, it was only a formal order of changing the disciplinary authority due to some defect or infirmity.

After hearing both the sides and having regard to the legal position, in the facts and circumstances of this case, we do not find that there is any illegality in the enquiry officer proceeding on the basis of the earlier evidence. We would presently point out that the whole case depends upon the admitted facts. Even if the entire evidence of P.W. 1 to 3 is ignored on the ground that they are not recorded after second enquiry order, it will not help the applicant in any manner since the point at dispute is admitted by him viz. wearing something on the uniform. Similarly, the allegation that about three sentences in the statement of Mr. Naresh Kumar having tampered with also has no merit in the facts and circumstances of this case, since even if we ignore those sentences, ~~and the same are not mentioned in the report~~ it will not help the applicant because the applicant has never taken such a plea earlier when he filed the appeal or when he represented to the Disciplinary Authority against the enquiry report. Now it is a case of allegation by the applicant and denial by the respondents. Even if we accept the applicant's case and ignore the sentences, it will not help the applicant for the reasons to be stated shortly.

Mr. Naresh Kumar was the Additional Dy. Commissioner of Police who checked the applicant on that day. This fact is admitted. Even the applicant says that he wanted to explain as to why he was wearing such dress, but the officer did not listen him and immediately placed him under suspension. Mr. Naresh Kumar himself ordered disciplinary enquiry, he came to be examined as P.W. 3. It is in those circumstances, the administration thought that since the disciplinary authority has become a witness he should not initiate disciplinary action. That is how another Additional Dy. Commissioner of Police issued a second order of conducting the enquiry on the same set of allegations which are admitted and undisputed in this case, though there may be some irregularity in not recalling P.W. 1 to 3 and recording their evidence afresh. We do not find that any prejudice is caused to the applicant on that score. As pointed out by the Supreme Court in State Bank of Patiala Vs. S.K. Sharma (AIR 1996 SC 1669), even if there is any irregularities or illegalities in conducting the enquiry, the test to be applied is test of prejudice. If as a result of not examining the P.W. 1 to 3, prejudice is caused to the applicant, then, no doubt the enquiry will be vitiated. Nowhere, in the application running into 25 pages there is any allegation that because of this procedure applicant has been prejudiced in any way. No such prejudice was demonstrated before us even at the time of arguments. Therefore, even though there is some irregularity in not recalling P.W. 1 to 3, in the facts and circumstances of the case, we do not find that any prejudice is caused to the applicant, particularly when the whole case depends upon admitted and undisputed facts.

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6. Now, the fact that applicant was wearing something in addition to the uniform on that day is not and has not been disputed before us. No doubt, the applicant has given some explanation as to why he did like that. His explanation is that it was winter and he was suffering from fever and therefore he wore additional clothes. This has not been accepted either by the Enquiry Officer, Disciplinary Authority or Appellate Authority. It is purely a question of fact which is to be decided by a domestic Tribunal and not open to judicial review by a Tribunal like this.

7. One of the contentions which was pressed into service by the learned counsel for the applicant is that admittedly the applicant's duty hours were from 8 a.m. to 2 p.m., but the alleged incident occurred at about 3 p.m. which was beyond the working hours of the applicant and therefore the applicant has not committed any mis-conduct even if he is wearing some clothes in addition to or over the uniform. The argument, on the face of it, appears to be attractive, but on a deeper scrutiny, we find that in the facts and circumstances of the case, we cannot accept. It may be, normally an official is expected to wear uniform during office hours or his working hours. If it is a case of a Group 'D' official like a Peon or a Clerk, the argument may be accepted. Here we are concerned with a disciplined force and the applicant was working as a Constable. His explanation is that even though his work expired at 2 p.m. the reliever had not come and he was just waiting to hand over charge to the reliever and go away. Even in such case, in Police Force or in a Disciplined Force, one cannot walk out ^{from} ~~from~~ the

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office or walk out of duty till a reliever comes. Therefore, we cannot accept the argument that the applicant's duty had come to an end by 2.00 p.m., but we say the working hours continued till he was actually relieved by the reliever. Therefore, the applicant must be on duty or continued on duty till the reliever actually comes. It is not in dispute that when the Additional Dy. Commissioner of Police had checked the applicant, the reliever had not yet come and therefore applicant was on duty though it was ^{beyond} 2.00^{PM}. If in such a situation, the applicant was not wearing uniform or wearing something in addition to uniform, it will be a mis-conduct. It is well settled by a recent decision of the Apex Court that the scope of judicial review is limited and this Tribunal cannot re-appreciate the evidence like an appellate Court (vide AIR 1999 SC 625 - Apparel Exports Promotion Committee Vs. A.K. Chopra). It is well settled that even if another view is possible, this Court cannot substitute its own finding in place of finding of fact recorded by a domestic Tribunal.

8. Having said all, we find that the applicant's version cannot be totally dis-regarded at least when it comes to the question of penalty. At the earliest point of time, the applicant came up with a theory that he was suffering from Malaria due to which he had to ~~wear~~ some additional clothes. This allegation has not been denied anywhere in the record. The authorities have not applied their mind to consider the defence of the applicant so far as the question of gravity of the mis-conduct is concerned. We cannot apply the simple rule for all

cases. Here, the allegation of mis-conduct was about wearing some clothes over the uniform. Therefore, the applicant was admittedly wearing uniform, but something over it. Though we have held that it is a mis-conduct, the gravity of the mis-conduct is not grave if the circumstances as pleaded by the applicant are accepted. His working hours were over at 2.00 p.m. The defence evidence shows that applicant made phone call as to why the reliever had not come till 2.00 p.m. and that he was told by the defence witness that the reliever is on the way; and due to cold being winter and due to Malarial fever the applicant wore some additional dress over the Uniform. If all these circumstances are taken into consideration, the gravity of mis-conduct can be minimised or lessened. In such a case, the penalty imposed appears to be harsh. In view of these facts, the case requires nominal or token punishment. Unfortunately, the Disciplinary Authority and the Appellate Authority have not applied their mind to these facts. Even on the question of penalty we are aware of our limitations. Therefore, we feel that this is a fit case in which the matter should be remitted to the Appellate Authority on the question of considering the applicant's defence regarding gravity of mis-conduct and regarding quantum of penalty.

9. In the result, the application is allowed partly. While confirming the orders of the Disciplinary Authority and the Appellate Authority regarding mis-conduct, the matter is remanded to the Appellate Authority only on the limited question of hearing the applicant again and passing appropriate orders regarding the penalty, in the light of the observations made in this order; we make it clear that though we have pointed out

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certain circumstances in the evidence, we are leaving it to the full discretion of the Appellate Authority to hear the applicant and take whatever decision he deems fit regarding the quantum of penalty. In the circumstances of the case, the appellate authority can pass the final orders within three months from the date of receipt of copy of this order. No order as to costs.

J.L.NEGI
(J.L.NEGI)
MEMBER(A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.