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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 115/95

New Delhi: this the 7<sup>th</sup> day of JANUARY 2000

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Constable Kailash Chand,  
previously Head Constable No. 2034/DAP,  
3rd. Bn. DAP, S/o Shri Mool Chand,  
R/o Shri Meer Singh,  
1106, Pana Paposian,  
Narela,

Delhi -40

..... Applicant.

(By Advocate: Shri Shankar Raju)

Versus

Lt. Governor of NCT of Delhi,  
through Commissioner of Police,  
Police Headquarters,  
MSD Building,  
IP Estate,  
New Delhi.

2. Addl. Commissioner of Police,  
Armed Police & Training,  
Police Headquarters, MSD Building,  
I.P. Estate,  
New Delhi.

..... Respondents.

(By Advocate: Shri Vijay Pandita)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the disciplinary authority's order dated 12.5.94 (Annexure-A1) dismissing him from service, and the appellate authority's order dated 10.10.94 (Page 23-25 of the OA) reducing the punishment to one of reversion to substantive rank of Constable. Applicant seeks restoration as Head Constable w.e.f.

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12.5.94 with all consequential benefits.

2. Applicant and Constable Anil Kumar were jointly proceeded against departmentally on the allegations that on 3.3.93 an undertrial prisoner Gurdip Singh lodged in case FIR No.281/84 under section 302 IPC P. S. Karolbagh, Delhi was referred to Bara Hindu Rao Hospital for medical treatment in OPD under the lawful custody of Constable Anil Kumar under handcuff and the Nigrani duty of applicant at 9.45 a.m. in hospital van from Tihar Jail. After getting the undertrial checked in OPD, applicant and Constable Anil Kumar took him to the hospital canteen for refreshments, and consumed Chholas, Bhaturas and tea. The undertrial succeeded in mixing some poisonous substance in the aforesaid eatables. After consuming the same, all of them left the canteen, but applicant and Constable Anil Kumar felt giddy and lost their senses after going about 100 yards. Applicant became unconscious and was removed by the undertrial to a lonely place in the hilly area where he also fell down. The undertrial searched Anil Kumar person, and obtained the key of the handcuff. He opened the handcuff and escaped from lawful custody.

3. Applicant as well as Constable Anil Kumar were suspended w.e.f. 3.3.93.

4. The Enquiry Officer in his inquiry report dated 1.12.93 (Annexure-A13) held the charge against

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applicant and Constable Anil Kumar proved beyond doubt. A copy of the Enquiry Officer's report was furnished to both defaulters for representation, if any. They submitted their representations. The Disciplinary Authority's impugned order dated 12.5.94 records that he gave them a hearing in the orderly room on 27.4.94 where they did not put forth any fresh plea but pleaded for mercy.

5. In view of the seriousness of the misconduct, the disciplinary authority after perusing the record and accepting the Enquiry Officer's finding, by impugned order dated 12.5.94 dismissed both the defaulters from service. Their suspension was revoked with effect from the date of issue of the aforesaid order dated 12.5.94 and the suspension period from 3.3.93 onwards was treated as period not spent on duty.

6. Thereupon both defaulters filed a joint appeal (Annexure-A15). The appellate authority's order dated 10.10.94 records that he gave both defaulters a personal hearing during which applicant pleaded that he was detailed on Nigrani duty only, and at the time when he became unconscious the undertrial was handcuffed to the co-defaulter who was fully responsible for guarding the undertrial. Recognising that this plea had some substance the appellate authority reduced the punishment of dismissal from service imposed on applicant to one of reversion from Head Constable to Constable for a period of five years.

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7. We have heard Shri Shankar Raju for applicant and Shri Vijay Pandita for respondents. Shri Shankar Raju has also filed written submissions which are taken on records.

8. During hearing Shri Shankar Raju challenged respondents' action primarily on two grounds which are borne out by his written submissions. Firstly it is argued that a copy of the preliminary inquiry report was not supplied to applicant despite examination of the officer who conducted the preliminary inquiry which violates respondents' circular dated 1.5.80 (copy annexed with the written submissions). Certain rulings have also been cited in support of this argument. Secondly it is contended that escape of a prisoner constituted a cognizable offence under sections 223/234 IPC and permission of the Addl. C.P. should have been taken before instituting the DE under Rule 15(2) Delhi Police (P & A) Rules which was not done.

9. In so far as the alleged violation of Rule 15(2) Delhi Police (P & A) Rules is concerned, a perusal of the same makes it clear that the Addl. C.P.' prior approval is necessary in cases disclosing the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public when a decision has to be taken whether a criminal case should be registered and investigated or a departmental enquiry should be held. Nothing in this sub-rule can legally <sup>prevent</sup> respondents from instituting a criminal case, as was done in the present case after the prisoner escaped, and instituting a DE against the defaulting police personnel. Hence this ground does not avail the applicant.

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10. In so far as the non-supply of the PE report is concerned, ~~but~~ ordinarily it might have been considered an infirmity serious enough to vitiate the departmental proceedings and thus warrant judicial interference, for having prejudiced applicant in his defence. In the present case <sup>however</sup> we find from a perusal of the disciplinary authority's impugned order, that applicant has himself not denied the material particulars of the incident, namely that the undertrial was in the custody of the two defaulters and the acceptance of refreshments which were obviously drugged while he was in their custody, led to their falling unconscious, as a result of which the undertrial succeeded in freeing himself and making good his escape. The fact that the Disciplinary Authority in his impugned order has recorded that the defaulters pleaded for mercy, and this assertion has itself not been challenged by the applicant in the OA, supports the conclusion that applicant did not deny the material particulars of the incident resulting in the escape of the undertrial, but pleads for a light sentence. When applicant has himself not denied the material particulars of the incident, it cannot be said that non-supply of the PE report has prejudiced him in his defence so as to warrant judicial interference.

11. Any doubts on this score are set at rest by the appellate authority's impugned order which states that he gave the defaulters a personal hearing in the OR, during the course of which applicant pleaded

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that he was on Nigrani duty only, and at the time he became unconscious the undertrial was handcuffed to his codefalter who was fully responsible for guarding the undertrial. This statement in the body of the appellate order has also not been denied by applicant in his OA. From this it is clear that applicant does not deny the material particulars regarding the escape of the undertrial, but has sought to minimise his own negligence and throw the entire responsibility on his codefalter. The appellate authority after holding that applicant's culpability was somewhat less, has reduced the punishment of dismissal imposed by the disciplinary authority on both the defaulters to one of reversion from Head Constable to Constable for a period of 3 years in the case of the applicant. In view of the seriousness of the default it cannot be said that this penalty imposed upon applicant is excessive.

12. In the result, we find no good grounds to warrant judicial interference in the OA which is dismissed. No costs.

  
( KULDEEP SINGH )  
MEMBER(J).

  
(S.R. ADIGE)  
VICE CHAIRMAN (A).

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