

Central Administrative Tribunal, Principal Bench

(10)

Original Application No.2586 of 1996

New Delhi, this the 26th day of April, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)  
Hon'ble Mr.V.K.Majotra, Member (A)

Ram Narain, S/o late Sh.Gopi Ram, R/o RRO  
Police Line, Safdarjung Airport Lane, New  
Delhi-110003 - Applicant

(By Advocate Shri S.K.Bisaria)

Versus

1. Commissioner of Police, M.S.Building, IP Estate, New Delhi.
2. Addl.Dy.Commissioner of Police,Security  
New Delhi. - Respondents

(By Advocate Ms.Jyotsna Kaushik through  
proxy counsel Shri Ajesh Luthra)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The applicant has assailed order dated 25.1.1994 passed by the Additional Deputy Commissioner of Police, Security, New Delhi imposing punishment of forfeiture of two years approved service permanently entailing reduction in applicant's pay from Rs.1360/- to Rs.1300/- per month in the time scale of pay for a period of one year and further that he would not earn increment of pay during the period of such reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. He has also challenged orders dated 18.5.1995 and 24.5.1996 in appeal and revision respectively upholding the order of punishment. The applicant has alleged that all these orders are illegal, arbitrary, non-speaking and contrary to the principles of natural justice.

2. The applicant was temporarily attached for VIP security duty and detailed for night reserve duty

during the night between 26 & 27 January, 1993. Allegedly, he was found under the influence of liquor by Shri Balbir Singh, Inspector. He was medically examined at RML Hospital. In the opinion of Dr.D.S.Chauhan the applicant had consumed alcohol and was under the effect of alcohol. The applicant has contended that Dr.Chauhan had given his opinion without conducting any medical test, other than physical examination and on the basis of the opinion of Dr.Chauhan, he was served with a charge sheet without any preliminary enquiry. The applicant has stated that he was denied his right to cross-examine Dr.Chauhan. The applicant has alleged that the disciplinary authority, the appellate authority and the revisional authority have not applied their mind and based their opinion wholly on the presumption and the medical opinion of Dr.Chauhan. The applicant has further stated that whereas Dr.Chauhan was never examined before the enquiry officer, his defence witness Dr.(Mrs)Bimla Kumar, Chief Medical Officer, CGHS Dispensary, Ashok Vihar, under whom the applicant was under treatment for acute bronchitis asthma, had stated on oath that she had prescribed for the applicant medicines containing a high content of alcohol. The applicant has sought quashing the enquiry report dated 6.11.1993 and order dated 25.1.1994 of the disciplinary authority, the appellate order dated 18.5.95 and the order dated 24.5.1996 in the revision, with all consequential benefits.

3. The learned counsel of the respondents has

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relied upon the opinion of Dr.Chauhan who has confirmed that the patient had consumed alcohol and was under the effect of alcohol. According to him although Dr.Chauhan had not been examined in the enquiry, the authorities are empowered under Rule 16(iii) of Delhi Police (Punishment & Appeal) Rules, 1980 to bring on record the earlier evidence of any witness whose presence could not be procured. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel of the parties and examined the record of the enquiry produced by the respondents, as well as the material available in the file.

5. The learned counsel for the applicant stated that whereas in medical jurisprudence to establish consumption of alcohol it is necessary to subject the person concerned to blood/urine/split tests the applicant had not been subjected to any such tests. Dr.Chauhan whose opinion was taken by the respondents, was not examined by the enquiry officer. According to applicant's counsel it is a case of no evidence. He has further alleged that the disciplinary authority and the authorities passing the orders in appeal and revision have not considered these defects and have passed only non-speaking orders. He has drawn our attention to the evidence of Dr.(Mrs) Bimla Kumar, DW in the enquiry who had stated that the applicant had come to her on 10th & 21st January, 1993 in OPD. He is a patient of asthma. She had given him injection and medicine. She had prescribed Grinlinctus containing 60% alcohol and

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Phansidril containing 45% alcohol. The applicant's counsel also took exception to the fact that the applicant had not been supplied a copy of the statement of Dr.Chauhan.

6. The learned counsel for the respondents expressed that the applicant had admitted in his statement that he had consumed medicines like Pudin Hara containing 90% alcohol, Phansidril and Grinlinctus containing 40-60 % alcohol and, therefore, he was smelling of liquor. According to the learned counsel for the respondents when the applicant had himself admitted consumption of alcohol in this manner, it was not necessary for them to examine the doctor on whose statement in any case they were entitled to rely upon under the afore-stated rule. The learned counsel produced before us samples of the afore-mentioned medicines. We discovered therefrom that whereas Pudin Hara contains only 10% of alcohol content and the other two do not have any alcohol at all.

7. From the records we find that the authorities have sufficient evidence in the enquiry and have also taken into account the opinion of Dr.Chauhan in coming to a finding that the applicant had consumed alcohol and was under the effect of alcohol. We find that the disciplinary authority in his order has stated that the applicant was properly examined by Dr.Chauhan. He has gone on to state that "[T]he question that arises is that if prescribed quantity of syrup is taken which are around 2 table spoon full TDS as recommended by DW-1, it cannot by any means produce the effect of being under influence of liquor". He further took note of

Dr. Chauhan's statement that there was dilation of pupils certainly pointing towards the fact that the applicant was under the influence of liquor. This clearly shows that the disciplinary authority had appreciated the evidence adduced before him. We are inclined to accept the contention of the learned counsel for the respondents that when the applicant had admitted that he had consumed alcohol, though as part of medicine, it was not necessary to examine the doctor in the enquiry. The learned counsel for the respondents has proved by demonstration, as stated above, that the medicines which had been prescribed to the applicant contain only 0-10% alcohol and not a very high content of alcohol, as claimed by the applicant. In this view of the matter, we are not in a position to disregard the conclusion of various authorities in finding that the applicant had consumed liquor and was under the influence of liquor while detailed on security duty.

8. The learned counsel for the respondents had also stated that the applicant had at no stage in the enquiry demanded that the doctor must be examined and we find that no prejudice has also been caused to the case of the applicant by non-examination of Dr. Chauhan. (See observation in JT 1996 (3) SC 722 State Bank of Patiala and others Vs. S.K. Sharma). We are also of the view that in a disciplinary proceedings it is the preponderance of probabilities and not requirement of stricter proof as required in a criminal trial. In our view the authorities have not committed any procedural irregularity in the enquiry and have come to the correct

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findings while imposing the penalty in question. In the light of the above reasons, we do not find any justification to interfere with the impugned orders.

9. In the result, the OA is dismissed. No costs.

V.K.Majotra

(V.K.Majotra)  
Member (A)

Lakshmi Swaminathan

(Mrs.Lakshmi Swaminathan)  
Member (J)

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