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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2547 of 1997

New Delhi, this 25th day of the October, 2000

Hon'ble Mr. Justice Ashok Agarwal, (Chairman)  
Hon'ble Mr. M.P. Singh, Member(A)

Ex-HC (Dvr.) Arjun Singh  
S/o Shri Rishal Singh  
HC No. 7183/DAP (PIS No.29861087)  
Vith Bn. DAP, Delhi ... Applicant

(By Advocate: Shri U. Srivastava & Shri Gyaneshwar)

Versus

Union of India through

1. The Senior Additional Commissioner of Police  
Police Headquarters,  
MSO Building, I.P. Estate,  
New Delhi-02.
2. The Deputy Commissioner of Police  
6th Bn. DAP, Delhi.

.... Respondents

(By Advocate: Shri Devesh Singh)

ORDER (oral)

Hon'ble Mr. Justice Ashok Agarwal (Chairman)

We have heard learned counsel for the contesting parties and in our judgement we feel the impugned order of penalty of dismissal from service imposed on the applicant and disciplinary proceedings conducted against him are liable to be quashed and set aside on the short ground, namely, the disciplinary authority while imposing the aforesaid penalty has also taken into account applicant's previous bad record, without the same being a part of the summary of the allegations levelled against him and without affording the applicant an opportunity of notice in respect of the same. The disciplinary authority in his impugned order passed on 8.5.1997 has observed as under :-

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"I have also perused his record in character roll which shows that he has been awarded minor punishment and Punishment Drill for 15 days. In the case under consideration, he being a driver of this unit, was driver of this unit, was driving vehicle of the unit and as such was practically on duty. Obviously, this a serious misconduct which interferes with the performance of duty and also affects image of the force adversely in the eye of public.

In the light of above I am of the considered view that the misconduct of defaulter, HC(Drv.) Arjun Singh; 7183/DAP is very grave and the same has to be taken up seriously to curb such incidents and work as a deterrent example to the police personnel found drinking or being drunk while performing duties. Such type of Police Officer is completely unfit to be retained in the disciplined force. I, therefore, dismiss, HC(Drv.) Arjun Singh from the force with immediate effect....."

2. Aforesaid observations of the disciplinary authority have to be seen in the light of the summary of the allegations levelled against the applicant which recites as under:-

"It is alleged against HC(Dvr.) Arjun Singh No. 7183/DAP that while driving Govt. Vehicle No. DEL-4372 Tata Truck struck it with a tree and uprooted it in the 6th Bn. DAP compound on 4-3-96 at about 10.00 p.m. When pointed by Const. Babu Lal No. 7763/DAP who on duty at Gate No.2, the HC(Dvr.) sped away. He came back at about 10.30 p.m. and when checked by S.I. Mukand Singh S.D.O. he was found under the influence of liquor as he was speaking incoherently and the smell of alcohol was coming out from his mouth. On enquiry it was found that he was not on official duty and drove the vehicle unauthorisedly. Subsequently he was got medically examined at Hindu Rao Hospital and the medical officer opined that "Smell of alcohol present. This person has consumed alcohol".

3. From a perusal of the aforesaid summary of allegation, it is clear that the same does not even

remotely make a reference to the earlier adverse record to be found in the character roll of the applicant. No reference is found to the effect that the applicant was awarded a minor punishment for damaging government vehicle. There is no reference to Punishment Drill imposed against him. Aforesaid material thus seems to have been taken into account for the purpose of inflicting the extreme penalty of dismissal from service.

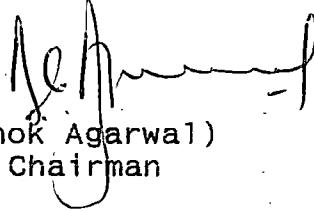
4. We are conscious of the fact that allegations found proved against the applicant are undoubtedly of a serious nature and without reference to the aforesaid earlier adverse record ~~which might be the basis of~~ an order of dismissal from the service passed against the ~~can well be justified~~ applicant. However, it is difficult to fathom what penalty the disciplinary authority would have ~~proposed~~ <sup>to</sup> ~~and~~ imposed on the aforesaid material being kept out of his consideration. In the circumstances, the aforesaid order of penalty deserves to be quashed and set aside. As a consequence, the order passed by the appellate authority on 14.8.1997 is also quashed and set aside. It is clarified that it would be open to the disciplinary authority to reconsider the quantum of penalty to be imposed upon the applicant, after keeping out of consideration, the aforesaid earlier adverse record of the applicant in the confidential role and, thereafter to impose an appropriate order of penalty. ~~It will also be open to the disciplinary authority, if~~

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se—advised to afford the applicant an opportunity of being heard afresh. It will also be open to the disciplinary authority if he is so advised to give notice to the applicant in respect of the aforesaid earlier adverse record by submitting an additional summary of allegations and give an opportunity to applicant to defend himself and thereafter, again pass an order of penalty in accordance with the rules. It goes without saying that in case the applicant is aggrieved by the order to be passed by the disciplinary authority, he will be at liberty to impugn the same in an appeal and thereafter, by way of filing a fresh OA in the Tribunal. The disciplinary authority is directed to initiate action within a period of three months from the date of receipt of the copy of the order. <sup>In default</sup> The applicant will be entitled to reinstatement in service without consequential benefits. Present OA is partly allowed in the above terms. There shall be no order as to costs.

  
(M.P. Singh)

Member(A)

  
(Ashok Agarwal)

Chairman

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