

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2124/94

199

T.A. No.

DATE OF DECISION 30-7-99

SI Sukhbir Singh & Ors

....Petitioner

Mrs. Avnish Ahlawat

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCTD through
Commissioner of Delhi and Ors.Respondent

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri V. Ramakrishnan, Vice Chairman (A)
The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

J. Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2124/94

New Delhi this the 30th day of July, 1999

(9)

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Sub-Inspector Sukhbir Singh,
No. 623/D, Delhi Police.
2. Head Constable Naresh Kumar,
No. 114/NW, Delhi Police.
3. Constable Surender Singh,
No. 605/NW, Delhi Police.
4. Constable Kanwar Pal,
No. 1525/NW, Delhi Police. Applicants.

By Advocate Mrs. Avnish Ahlawat.

versus

1. Government of National Capital Territory of Delhi, through Commissioner of Police, Delhi, Police Headquarters, MSO Building, I.P. Estate, New Delhi-110 0002.
2. Shri Deep Chand,
Deputy Commissioner of Police
(North West Distt.),
Delhi Police,
Delhi.
3. Shri P.R.S. Brar,
Addl. Commissioner of Police,
Northern Range, Delhi Police,
MSO Building, I.P. Estate,
New Delhi-110 002.
4. Shri M.R. Gothwal,
Assistant Commissioner of Police,
Special Division,
Delhi Police, Narela,
Delhi. Respondents.

By Advocate Shri Bhaskar Bhardwaj proxy for Shri Arun Bhardwaj.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants are aggrieved by the penalty order authority passed by the disciplinary dated 16.11.1992 and modification

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of that order by the appellate authority by order dated 21.7.1993.

2. The brief facts of the case are that there are four applicants in this case. They were proceeded jointly in a common proceeding on the basis of the following charge:

"I, M.R. Gothwal, Enquiry Officer, ACP/Narela charge you S.I. Sukhbir Singh No. 623/D, H.C. Naresh Kumar, No. 114/NW, Constable Surender Kumar, No. 605/NW and Constable Kanwar Pal No. 1525/NW that while posted as division officer and beat staff of J.J. Colony Shakur Pur of Police Station Saraswati Vihar that you failed to collect the intelligence in your division/beat about manufacturing spurious liquor in your area as on 10.4.92. Special staff North West District, Delhi apprehended one Ram Phal S/o Vas Dev r/o M-657, J.J. Colony, Shakur Pur while he was manufacturing spurious liquor of Delhi Excise by mixing spirit, water and campa cola and filling the prepared mixture in the empty 'Delhi Excise' bottles with intention to sell it in the locality. A cane containing 40 litres of spirit, 1200 caps of Delhi Excise bottles funnels and buckets etc. used for manufacturing the spurious liquor were recovered. He was manufacturing in House No. G-131, J.J. Colony Shakur Pur. A case FIR No. 141 dt. 10.4.92 under section 61.1.14 Ex. Act was registered in police station Saraswati Vihar, Delhi.

The above act of you, S.I. Sukhbir Singh, H.C. Naresh Kumar, constable Surender Singh and Constable Kanwar Pal amounts to gross misconduct and negligence in the discharge of official duties which render them liable for departmental action under section 21 of Delhi Police Act, 1978."

3. The Inquiry Officer in his report has concluded that the charge has been proved based on the evidence of witnesses whose statements have been taken on record. A copy of the report had been given to the applicants who had made representations against the same. The disciplinary authority came to the conclusion that it is insignificant that the defaulters had no connivance with the accused persons, but the detection of such a case by another agency clearly proved that the defaulters had failed to perform their duties and responsibility as the Division Officer/Beat Officers in collecting intelligence

and taking action against the accused persons indulged in preparation of poisonous substance/spurious liquor for which he imposed punishment by the impugned order dated 16.11.1992. He has stated that the four defaulters deserved severe punishment and accordingly Applicants 1 and 2 were reduced to their lower rank of ASI and Constable, respectively for a period of six years and with regard to Applicants 3 and 4 who are Constables, their six years approved service was ordered to be forfeited permanently entailing reduction in their pay. On appeal, the appellate authority has dealt with the grounds taken by the applicants. He has also referred to the statement of the accused/given during interrogation who is stated to have disclosed before the ACP Shri Rupinder Kumar that he had started manufacturing of illicit liquor only three days before the raid on 10.4.1992. The appellate authority had further noted that in the circumstances since Head Constable Naresh Kumar (Applicant No.2) was on leave from 9.4.1992 to 13.4.1992, Constable Kanwar Pal (Applicant No.4) from 8.4.1992 to 10.4.1992 and Constable Surender Singh (Applicant No.3) from 9.4.1992 to 12.4.1992 and the accused had started his activity only about three or four days before the raid was conducted, therefore, the gravity of failure to collect intelligence from their beat and division to some extent is minimised and accordingly the penalty order was modified and punishment of all the four accused was reduced to forfeiture of ~~two~~¹⁸ years approved service entailing reduction in their salary.

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4. Mrs. Avnish Ahlawat, learned counsel for the applicants, has submitted that the findings of the Inquiry Officer are totally perverse as there was no evidence on which he could have come to his conclusion that the charges against the defaulters were proved.

5. Another ground taken by the applicant is that no misconduct has been established in this case for which the defaulters could have been given any punishment. She has relied on the judgement of the Supreme Court in Union of India and Ors. Vs. J. Ahmed (AIR 1979 SC 1022-para 7). Her contention is that merely because somebody was caught with spurious liquor, ^{cannot be sufficient} to hold that the applicants failed to collect intelligence on the activities of the accused. She has also very vehemently contended that the ACP himself had stated that the accused person had stated that he started the business of manufacturing spurious liquor only two-three days before the raid was conducted i.e. from 8.4.1992 and it is a fact that at least three of the defaulters were on leave around this time. She has also submitted that the ACP, Shri Rupinder Kumar should have been called as a witness by the Inquiry Officer but that has not been done. In the circumstances, learned counsel has stressed that as this is a case of no evidence and no misconduct has been proved against the defaulters, there is no question of imposing any punishment on them and hence the O.A. must be allowed and the punishment orders be quashed and set aside. She has also relied on the judgement of the Supreme Court in Mumtaz Hussain Ansari Vs. State of U.P. (AIR 1984 SC 1116).

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6. The respondents in their reply have submitted that the applicants have been dealt with departmentally for their gross misconduct and negligence in the discharge of their duties that while posted at P.S. Saraswati Vihar and working as Division Officer and Beat Staff of J.J. Colony, Shakurpur, they failed to collect intelligence in their division/beat about the manufacturing of spurious liquor. Shri Bhaskar Bhardwaj, learned proxy counsel for the respondents, has submitted that on the information being given to the Special Staff, North-West District, Delhi on 10.4.1992, they apprehended one Ram Phal for manufacturing spurious liquor. He has submitted that a can containing 40 litres of spirit, 1200 caps of Delhi Excise bottles, 6 filled up bottles of spurious liquor, 8 empty Delhi Excise bottles, funnels and buckets, etc used for manufacturing of spurious liquor were recovered from House No. G-131, J.J. Colony, Shakur Pur, Delhi and FIR No.141/92 was lodged on 10.4.1992 by P.S. Saraswati Vihar, Delhi. Learned counsel has submitted that the departmental proceedings were held in accordance with the Rules. He has submitted that even if the applicants 2, 3 and 4 might have been on leave during some days immediately preceding 10.4.1992, Sub-Inspector Sukhbir Singh was not on leave who was the Incharge of the division under whom the others were posted as Beat Constables. He has also submitted that the appellate authority had reduced the punishment of all the four applicants from reversion in rank and forfeiture of six years approved service to forfeiture of ^{1/2} two years approved service ~~in the case of applicants 1 and 2 and forfeiture of two years service in the case of applicants 3 and 4~~ entailing consequent reduction in their salary. This also shows that the punishment has been awarded after due application of mind. Learned proxy counsel

has submitted that the applicants were assigned duty which included collection of intelligence and detection of crime in the division as Beat Officer which they have failed to perform. They were also aware that the area under them was inhabited by 'Sansi' community who indulge in such activities and, therefore, they were fully responsible for the lapse on their part in detecting the manufacturing of spurious liquor. He has submitted that under Rule 16(v) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'), it was for the applicants to produce the ACP as their witness and there is no infirmity on this ground. He has submitted that having regard to the nature of the charge and the fact that the information regarding manufacturing of spurious liquor by Ram Phal had been given to Special Staff, North-West District, there was no reason why the applicants who were on duty to gather such information could not do so for which they had been correctly awarded the punishment by the competent authority i.e. the appellate authority in his order dated 21.7.1993. He has also submitted that as there is ~~no~~ evidence to establish the misconduct and two witnesses had been examined during the departmental enquiry who had proved the same, the Tribunal ought not to set aside the punishment order.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The learned counsel for the applicant had vehemently argued, relying on the judgement of the Supreme Court in J. Ahmed's case (supra), that the charge in the present case does not disclose any misconduct on the part of the

applicants. According to her, there was no question of holding disciplinary proceedings against the applicant or awarding any punishment whatsoever in the present case. We have carefully read the judgement of the Supreme Court and find that the observations in that case are not applicable to the facts in the present case. In that case, the Supreme Court has held as follows:

"....that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgement in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is another failure to perform the duty in a certain manner. Charges Nos. 2 and 5 clearly indicate the shortcomings in the personal capacity or degree of efficiency of the respondent. It is alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding a post of Deputy Commissioner would be expected to possess..."

It was further held that in the facts and circumstances, there was no case stricto sensu for a disciplinary proceeding against the respondent as what was alleged was not misconduct as the word is understood in service jurisprudence. However, in the present case, the charge against the applicants was that while the applicants were posted as Division Officer and Beat Constable\$, they failed to collect intelligence in their division/beat about the manufacturing of spurious liquor. The learned proxy counsel for the respondents has also referred to the provisions of Sec.60(b) of the Delhi Police Act, 1978 which provides that it shall be the duty of every police officer to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and to lay such information and to take such other steps consistent with

law and to prevent the commission of such offences. The applicants have not denied that they had been posted as Division Officer and Beat Staff of J.J. Colony, Shakarpur during the relevant time. Therefore, in the facts and circumstances of the case, it is not possible to hold that the charge against the applicants of misconduct cannot constitute misconduct for the purpose of disciplinary proceedings as held by the Hon'ble Supreme Court in the case of J. Ahmed (supra) where it was held that substance of the allegations was that he was not a very efficient officer and lacked the quality of leadership and was deficient in the faculty of decision making. Those factors are not applicable to the present case, as in the departmental proceedings, PW-2 had deposed that the applicants were detailed as Division Officer/Beat Constables in Division No.3 pertaining to J.J. Colony, Shakarpur. As beat constables, it is not denied that they were ~~not~~ required to collect the intelligence in their division/beat about the manufacturing of spurious liquor. It is also relevant to note that the learned counsel for the applicants ^{himself} of the applicants had stated that the area/was inhabited by the 'Sansi' community and they had themselves got registered 35 such cases under the Excise Act against various individuals. Learned counsel has emphasised that they were diligent in the discharge of their duties as they had registered these 35 cases in less than a month but that does not by itself exonerate them from the charge levelled against them in the present case of failure to collect intelligence regarding manufacture of spurious liquor in their area which was found

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by the Special Staff of North-West District when they apprehended one Ram Phal on 10.4.1992.

9. Regarding the other main ground taken by the learned counsel for the applicants that this is a case of no evidence, we are again unable to agree with this contention. It is seen from the Inquiry Officer's report that there were two prosecution witnesses and a number of defence witnesses who have been called at the inquiry. The prosecution witnesses have, *inter alia*, stated that the applicants were detailed as Division Officers and Beat Constables in Division No. 3. The contention of the learned counsel for the applicants that the applicants have been very efficient in their work as they had detected 35 excise cases in their area and not detecting the particular case for which they were charged is not misconduct, is not tenable. They were on duty in that area, which included collection of intelligence in their division/beat and we, therefore, do not find that this is a case of no evidence to justify ~~the~~ setting aside the punishment orders.

10. Learned counsel has placed reliance on the judgement of the Supreme Court in Mohd. Ansari's case (supra) and has submitted that the Inquiry Officer should have called the ACP Rupinder Singh in the inquiry and having failed to do so the same is vitiated. In Mohd. Ansari's case (supra), the appellant had prayed for summoning eight witnesses for being examined which had not been allowed by the Tribunal/competent authority ^{which} had had dismissed the application on the ground that it had already considered the relevant rules in the Financial Code. It was stated that the appellant had to bear the expenses of the witnesses who are private persons if he wanted to have them examined in his defence. In the

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present case, ACP is not a private witness and the question of calling the witness after depositing the daily allowances and T.A. is not relevant here. The disciplinary authority in his order had relied upon the Inquiry Officer's report and representations made by the applicants and the other relevant documents in coming to the conclusion that the defaulters had failed to collect intelligence in their area and to curb the activities of illegal brewer~~e~~ which was their prime responsibility. The appellate authority has set out the grounds taken by the appellants/applicants against the departmental proceedings point by point in his order. He has also commented on the failure of the Inquiry Officer to call the witness Shri Rupinder Kumar (sic), ACP, Saraswati Vihar as follows:

"The E.O. for hiding truth had not called the essential witness Shri Rupinder Kumar, ACP/ Saraswati Vihar who had investigated the case. During the interrogation, the accused of this case Sh. Ram Phal had disclosed before ACP/ Saraswati Vihar that he had started manufacturing of illicit liquor only three days before the raid on dated 10.4.1992. As such it was not possible for the appellants to have the intelligence about them as HC Naresh Kumar was on leave from 9.4.1992 to 13.4.1992 and Const. Kanwar Pal Singh was on leave from 8.4.1992 to 10.4.1992 and Const. Surender Singh was on leave from 9.4.92 to 12.4.92. During their posting of about 1 to 6 months in that Division/Beat, the appellants have detected about 35 cases of Delhi Excise".

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The appellate authority has further stated that after going through the appeals submitted by the appellants and the other relevant records and giving the appellants full opportunity to defend their case, it is seen that the E.O. had held the charges as proved. He has also stated that the appellants had given a letter calling Shri Rupinder Kumar, ACP Saraswati Vihar as a defence witness, but he did not appear on the given date and, therefore, his name was dropped from the witnesses. The appellants being Division Officer and Beat Officers were fully responsible for their failure to check and detect the activities of illegal brewer. However, the appellate authority has stated that he finds some merit in the contention of the appellants that the accused had started his activity only about three or four days before the raid was conducted and, therefore, the gravity of failure to collect intelligence from their beat and division to some extent is minimised. Accordingly, he reduced the punishment of all the appellants from reduction in rank and forfeiture of six years approved service ~~for a period of six years~~ to forfeiture of two years approved service ~~for a period of two years~~ entailing consequent reduction in their salary.

11. From the details of the appellate authority's order set out above, it is seen that the competent authority had taken into account what has been ~~taken~~ ¹⁸ by the accused Ram Phal to ACP, Saraswati Vihar, particularly with regard to reduction of the penalty imposed earlier by the disciplinary authority. In the facts and circumstances of the case and having regard to the nature of the charge levelled against the applicants and what has been referred to in detail by the appellate authority in his order, the absence of ACP Saraswati Vihar have caused prejudice them. This does not in the departmental proceedings cannot be taken to vitiate the proceedings which justifies/setting aside the appellate authority's order as he has already taken this into account

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while reducing the penalty. The responsibility of the applicants for collecting the intelligence and checking the area under their division/beat to detect the activities relating to ^{manufacture of} spurious liquor has been established by evidence on record. In the facts and circumstances of the case, we find no good grounds to interfere in the matter on this ground also.

12. In the result, for the reasons given above, O.A. fails and it is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

(V. Ramakrishnan)
Vice Chairman(A)

'SRD'