

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1182/94

New Delhi this the 3rd day of February, 1997.

HON'BLE MR. JUSTICE B.C. SAKSENA, ACTING CHAIRMAN
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Ex. Constable Vijender Singh
S/o Shri Ishwar Singh
R/o Village & P.O. Naya Bans
Delhi-110082

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Applicant

(By Advocate Shri Shanker Raju)

Vs.

1. Lt. Governor, National Capital
Territory of Delhi
(Through: Addl. Commissioner of Police)
Northern Range, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police
North-West District
Ashok Vihar,
Delhi-110052.

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Respondents

(By Advocate Shri Raj Singh)

ORDER

Justice B.C. Saxena :

The brief facts leading to the filing of this OA may be noted. The applicant who was a Constable in the Delhi Police was ordered to be placed under suspension by order dated 30.9.1991 on a report of the S.H.O. that the applicant was found drinking liquor in Barrack No.1. However, he was subsequently reinstated on 12.12.1991.

2. A departmental enquiry was ordered against the applicant on 24.9.1991 on the allegation that he was found taking liquor and was under its influence on 30.8.1991 in the Police Station premises and was charged for gross misconduct. A summary of allegations was issued. During

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departmental enquiry 4 P.Ws were examined. The inquiry officer framed a charge of misconduct, copy of which is annexed as Annexure A-7. The inquiry officer submitted his findings and the applicant submitted his representation against the same. The disciplinary authority passed an order on 2.11.1992 dismissing the applicant from service and also directing that the suspension of the applicant with effect from 9.9.1991 to 11.12.1991 shall be treated as 'not spent on duty'. The appeal against the said order also failed and was rejected by respondent No.1 by his order dated 30.7.1993.

3. The applicant has challenged the order of punishment as also the order passed by the appellate authority.

4. The respondents have filed a counter-affidavit to which the applicant has also filed a rejoinder. We have heard the learned counsel for the parties.

5. Shri Shanker Raju, the learned counsel for the applicant submitted that in the summary of allegations and the charge framed by the inquiry officer, ^{it was} alleged against the applicant that he committed misconduct while posted at P.S.Kanjhawala, he was found consuming liquor in Police Station Barrack at 8.45 PM on 30.8.1991 when checked by Inspector Raghbir Singh. It was further alleged that he was sent for medical examination with ASI Nobat Singh at R.R.H.C.Kanjhawala where Dr.Om Parkash on duty after the medical examination opined "Smell of alcohol is coming from his mouth- Irrelevant talks- and Drunken". On the basis of this it was alleged against the applicant that he committed gross misconduct of indiscipline/attitude rendering him unbecoming of a Government servant in violation of Rule 3(i)(iii) of C.C.S.(Conduct) Rules, 1964.

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6. The learned counsel for the applicant submitted that the applicant was off duty at the relevant time and was taking rest in Barrack No.1 of Police Station. The said barrack was strictly meant for residence and a number of other police officials were also residing there. In a way, the said barrack was the residence of the applicant. He further submitted that the applicant was not found to have misbehaved or creating nuisance. Nor was he under the influence of liquor as to cause breach of peace. The applicant was inside his barrack where he used to reside. There is no evidence of any nuisance or misbehaviour of the applicant with any police official or public person. These averments have been made in the OA. These averments have not been controverted in the counter-affidavit.

7. The disciplinary authority in his order found the charges to be proved and held that the misconduct is a serious one and the applicant is quite unfit for retention in a disciplined force like police.

8. The appellate authority in his order dealt with the plea of the applicant that at the relevant time, the applicant was not on duty. The appellate authority stated that this plea was not relevant and has observed that the Policemen at the Police Station ^{have to} maintain proper decorum at all times. He further observed that the Policemen are on duty 24 hours and Police Stations cannot be permitted to be ~~reconverted~~ to dens for drinking.

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9. The learned counsel for the applicant cited a decision of the Punjab and Haryana High Court reported in 1983(2) S.L.R.159(Rattan Lal Vs. The State of Haryana & ors.). A perusal of paragraph 3 of the said judgement shows that a similar plea that a Policeman is supposed to be on 24 hour duty was considered. The said contention was rejected and it was observed:

" If that be so, then all members of the Police Force, high or low, have to be taken on duty during the course of their entire service right from the day of their enrolment and if consumption of alcohol has again to be taken as a misconduct then probably most of them can any time be held guilty of the same. To everybody's knowledge, the factual position is entirely different. Otherwise also I am of the considered view that mere consumption even if this has to be taken as an established fact in the case in hand does not amount to any misconduct known to the service Rules. Merely because an employee is found under the influence of liquor without anything more, does not, to my mind, render the employee to such disciplinary action."

It was further observed:

" It rather looks somewhat intriguing that the state and its functionaries who treat excise revenue as one of its major sources of income should hold that mere consumption of alcohol by its employees is some sort of misconduct."

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10. The learned counsel for the applicant further invited our attention to a decision in OA No. 2400/90 (Satbir Singh Vs. Commissioner of Police, Delhi & ors.) rendered by the Principal Bench on 27.9.1995. In the said order the decision of the Punjab & Haryana High Court in Rattan Lal's case was considered in support of the contention that mere consumption of liquor even while on duty would not amount to an act of misconduct. The Division Bench expressed the view that mere consumption of liquor, without anything more, will not amount to a misconduct and consequently the decision of the disciplinary authority holding the applicant guilty of misconduct was held to be not warranted.

11. The learned counsel for the applicant also cited a decision of the Hon'ble Supreme Court in State of Punjab & others vs. Ram Singh (1992 SCC (L&S) 793). In the said case, the question was whether a single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. In the facts of the case, the respondent who was on duty as a gunman had a service revolver in his possession. He drank alcohol heavily and became uncontrollable. He was seen roaming or wandering in the market with service revolver. The learned counsel for the applicant has cited this decision only to take support from the following observations in para 9 of the said judgement:

- Taking to drink by itself may not be a misconduct. Out of office hours

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one may take to drink and remain in the house."

The other observation relating to a situation while on duty is not attracted in the facts of the present case.

We are, therefore, of the view that the contention of the learned counsel for the applicant that in view of the proved charge against the applicant even if he was found to have consumed liquor while resting in barracks ^{when off duty} on duty without anything more would not amount to misconduct and as such no disciplinary action against the applicant should have been taken. The observation of the Hon'ble Supreme Court clearly supports the submission of the learned counsel for the applicant.

12. In this context it would be relevant to note that the Deputy Commissioner of Police in his order dated 24.9.1991(Annexure A-5) had stated as follows:

- * It is alleged against Const. Bijender Singh, 1229/NW that while posted at PS Kanjhawala on 30.8.91 he was found taking wine and he was under the influence of liquor when checked by Inspr. Raghbir Singh, SHO/ Kanjhawala at 8.45 PM, despite the clear instructions that no one will consume liquor in the PS premises.*


It was held that the above act on the part of the applicant amounts to gross misconduct and indiscipline in the discharge of his official duties which renders him liable to be dealt with departmentally.

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13. Contrasted with what was stated in the said order, we find that in the charge no such allegation of the applicant having violated clear instructions that no one will consume liquor in the Police Station premises has been repeated either in the summary of charge or the chargesheet. Thus the applicant was not alleged to have violated the said "clear instructions" and in this view of the matter on the basis of the allegation^{on which} which the applicant was made to face in the departmental enquiry we have recorded our finding that the applicant cannot be said to have committed misconduct.

14. In the light of the finding hereinabove, we quash and set aside the order of punishment dated 2.11.1992 as also the appellate order dated 30.7.1993 and allow the OA. The respondents are directed to reinstate the applicant in service and pay him arrears of salary and allowances which accrue to him accordingly within a period of two months from the date of receipt of a copy of this order by them. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(B.C. SAKSENA)
ACTING CHAIRMAN

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