

Central Administrative Tribunal
Principal Bench: New Delhi
OA 870/94

(6)

New Delhi this the 2nd day of August, 1999

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

Ram Kumar, H.C. No. 503 PCR
7169 DAP, 6th Bn.
Son of Shri Godha Ram,
R/o H.No. 585,
VPO Poothkalan,
Delhi-110 041.

Applicant

(By Advocate: Shri N. Safaya)

Versus

1. Lt. Governor, Delhi.
Raj Niwas, Rajpur Road,
Delhi.
2. The Addl. Commissioner of Police,
(Operation), I.P. Estate, Police HQ,
New Delhi.
3. Deputy Commissioner of Police,
Vith Bn. DAP, Delhi.
Police Headquarters, I.P. Estate,
New Delhi.

(By Advocate: None)

O R D E R

Hon'ble Mr. V. Ramakrishnam, VC (A)

The applicant, a Head Constable in Delhi Police, had challenged the orders dated 31.12.1992 issued by the Disciplinary Authority imposing the penalty of reduction of pay by four stages for a period of 4 years in the time scale of pay and ordering that during this reduction period, he will not earn his increments of pay and on expiry of this period, the reduction will have the effect of postponing his future increments of pay (Annexure 'A') and also the orders of the Appellate Authority dated 26.10.1993 confirming the penalty (Annexure 'B').

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2. The summary of allegations against the applicant stated that during the night intervening 9-10th of December, 1991 when he was on duty at PCR Van No. P-7, he had consumed liquor on duty and made unnecessary transmission with a view to jam the net from Police Station, Patel Nagar deliberately. An inquiry was held and the Inquiry Officer came to the finding that the charge was proved. This was accepted by the Disciplinary Authority who inflicted the above penalty which was confirmed by the Appellate Authority. These orders are impugned in the present O.A.

3. We have heard Mr. Safaya for the applicant and also have gone through the materials on records.

4. Mr. Safaya submits that the impugned orders cannot be sustained and urges the following grounds:

- a) There was no evidence whatsoever to substantiate any of the charges. He states that the charge was that he had consumed liquor on duty and secondly he had made unnecessary transmission over the wireless and that the same was done deliberately with a view to jam the net. He says that the applicant was attending to his duty and was stationed in the PCR Van which was parked inside the Police Station premises. He had made some transmission in the course of his duty and when the superior officers suspected

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that he had consumed liquor, he was produced for medical examination, it transpired that there was no smell of liquor in his mouth even though his breath smelt of liquor. The doctor had confirmed that smell of alcohol in breath of any person may be present for even more than 24 hours which depends on variable factors. Mr. Safaya says that the applicant had reported for duty at 8 PM and was examined at 12 mid night and, as such, it could not be held that merely because his breath smelt of liquor, he had consumed alcohol on duty.

The counsel also submits that he had made one or two transmissions and that cannot be held to be unnecessary or excessive transmissions. There was no intention to jam the net on the part of the applicant and this charge has not been substantiated by anyone. Mr. Safaya says that there is absolutely no evidence in support of the charge.

- b) The learned counsel also submits that the Appellate Authority had not applied his mind at all to the appeal. He had proceeded on the assumption that he had jammed the net whereas the charge against the applicant was that he made unnecessary transmission with a view to jamming the net. The Appellate Authority had misread the charge and this would show that he had not applied his mind and according to Mr. Safaya his order cannot

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be sustained.

- c) The learned counsel goes on to submit that the penalty order of the Disciplinary Authority confirmed by the Appellate Authority goes against the provisions of law as he can award only one punishment. According to counsel this is clear from the provisions of Section 21 of the Delhi Police Act read with Rule 8(d) of the Delhi Police (Punishment and Appeal) Rules. Mr. Safaya says that the Principal Bench in a few cases has confirmed this position.

5. We have carefully considered the submissions of Mr. Safaya. The role of the Tribunal in such matters is now well settled by a catena of decisions of the Hon'ble Supreme Court. It is not for this Tribunal to reappreciate the evidence or to sit as an Appellate Authority. However, if there is no evidence in support of the finding or the finding is perverse or there is violation of principles of natural justice, the Tribunal can interfere while exercising its power of judicial review.

6. Mr. Safaya has contended that there is no evidence at all to support the charge that the applicant had consumed liquor when he was on duty. Admittedly, the applicant had reported for duty at 8 O'clock and he was medically examined at 12 mid night. Mr. Safaya says that there was no smell of liquor in his mouth, Even though his breath smelt of liquor and that smell of alcohol in breath of

any person may be present even for 24 hours as stated by Shri D.K. Gupta, PW 4. However, the same witness has answered in reply to the previous question as follows:

Que. What is the difference between mouth smell and breath smell.

Ans. Mouth Smell means patient has taken drink just at the time of examination and breath smell mean consumption of alcohol approximately 90 minutes, before at the time of examination.

7. The applicant had been on duty four hours prior to the examination by the doctor who said that the breath smell could be there if liquor is consumed approximately 90 minutes before the time of examination. In other words, in the normal course he would have consumed liquor at 10 or 10.30 PM when he was already on duty. We also find that there is evidence to show that over the wireless his voice sounded like that of a person who has consumed alcohol and the officer was directed to check the position which resulted in the medical examination. There is nothing to show that it is an extraordinary case where the smell of alcohol in breath may be present even for 24 hours so far as he is concerned. In view of this, the Inquiry Officer had come to the finding on the basis of ^{some} ~~such~~ material that he had consumed liquor on duty.

8. As regards the alleged unnecessary transmission, the Inquiry Officer had relied on Ex. PW-2/A and other Exhs. Mr. Safaya submitted that making 2 or 3 calls does not amount to unnecessary transmission. He has referred to Ex. P-7 i.e., entries in the log book stated that the log book

recorded only one call and contends that if there were more calls, it would have been reflected in the log book. Here again, there is some material on the basis of which the Inquiry Officer came to his finding. From the extract of the log book (copy at Annexure F), we find that P-9 had informed P-1 to check P-7 who is stated to be making unnecessary transmission. There is, therefore, some material in support of the finding of the Inquiry Officer and it is not for the Tribunal to reappraise the same. The finding on this charge is not perverse.

9. Mr. Safaya stated that the applicant was charged with having made unnecessary transmission with a view to Jamming the net and no evidence had been led to show this. Here again, if there was material for the authorities to come to the finding that there was unnecessary transmission, this would result in jamming the net. The authorities had come to the conclusion that he has consumed liquor and the applicant had made unnecessary transmission deliberately and not just accidentally. The reference to the term "with a view to" cannot by itself absolve the applicant if it is proved in the inquiry that he made unnecessary transmission. We hold that the charge does not really require that it should be established that the applicant tried to sabotage the net with ulterior motive. The essence of the charge was that he made unnecessary transmission deliberately which resulted in jamming the net.

10. There is also a mention in the pleadings that somebody else could have made the transmission referring to P-7 call sign. Nothing has been brought out by the applicant in support of this stand to the effect that somebody else was interested in creating problem for him and made use of his

call sign. In its absence such an allegation is without any foundation.

11. For these reasons we do not agree with the stand of Mr. Safaya that there is no evidence in support of the charge.

12. Mr. Safaya has also brought out that the Appellate Authority did not apply his mind carefully and has misread the charge to the effect that the net was jammed whereas the charge against him was that he made unnecessary transmission with a view to jamming the net. No doubt the words used by the Appellate Authority are somewhat loose. However, once it is held that he was making unnecessary or excessive transmission, this would result in jamming of the net. ~~The fact that~~ ^{From} the Appellate Authority's order it is clear that he had gone into the contentions while rendering his order. We, therefore, reject this contention of Mr. Safaya.

13. Mr. Safaya has also referred to Section 21 of the Delhi Police Act read with Rule 5 of the Delhi Police (Punishment and Appeal) Rules and contended that the penalty imposed by the Disciplinary Enquiry upheld by the Appellate Authority amounts to multiple penalty and is against the law. We may state that this question had been gone into by the Full Bench of the Tribunal on the following reference made to it vide order dated 18th May 1999 in O.A. 2225/93.

Whether "the penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of X years

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with the condition that the delinquent police official would not earn increment/increments during the period of reduction and on the expiry of that period the reduction would have the effect of postponing the future increments", is in accordance with law.

14. The Full Bench by its order dated 18.5.1999 had held that forfeiture of certain years of approved service would necessarily entail reduction in pay and calls for a decision as to whether increments could be allowed or not. The Full Bench answered the question as follows:

"The penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of X years with the condition that the delinquent police official would not earn increment/increments during the period of reduction and on the expiry of that period the reduction would have the effect of postponing the future increments, is in accordance with law".

15. This decision of the Full Bench is binding on us. The contention that the orders of the disciplinary enquiry imposed multiple penalties and is thus illegal ^{and} rejected. *me*

16. We hold that the impugned orders cannot be quashed and set aside, for the reasons brought out above. We do not find any merit in the O.A., and dismiss the same. No costs.

Lakshmi Swamniathan

(Mrs. Lakshmi Swamniathan)
Member (J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman (A)

Mittal