

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1693/2000

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 11th day of July, 2001

Lalit Prasad
s/o Shri Swaran Singh
r/o Village Chhatikra
District Meerut
(UP), presently working
as Const. in Delhi Police.

.. Applicant

(By Advocate: Shri S.K.Gupta)

Vs.

1. Govt. of NCT of Delhi through
Chief Secretary
5, Sham Nath Marg
Delhi.
2. Commissioner of Police
Police Headquarters
I.P.Estate
New Delhi.
3. Addl. Commissioner of Police
(Armed Police)
Police Headquarters, I.P.Estate
MSO Building
New Delhi.
4. Dy. Commissioner of Police
IIInd Bn. Delhi Armed Police
Delhi.
5. Virender Singh Chauhan
Enquiry Officer/Inspector
c/o Dy. Commissioner of Police
IIInd Bn. D.A.P. Delhi. .. Respondents

(By Advocate: Shri A.K.Chopra, through Shri R.K.Singh)

O R D E R(Oral)

By Mr. Shanker Raju, Member (J):

In this OA the applicant has assailed an order passed by the disciplinary authority on 29.10.1999 whereby a minor penalty of censure was inflicted upon the applicant in pursuance of a major penalty chargesheet. The punishment was carried over in an appeal and by an order dated 14.6.2000, the punishment was maintained.

2. Briefly the facts of the case are that the applicant who was deputed at the residence of Shri Shyamal Dutta, Director of Intelligence Bureau at 9, Tuglaq Road on guard duty. On 21.6.1998 while Shri Dutta was coming out of his residence, the applicant was found sleeping at front gate of the residence of DIB while he was on duty from 2 PM to 6 PM. On this, a complaint was sent by Shri Dutta to Shri Prabhat Singh, DCP and also an enquiry was conducted into the allegations. The prosecution examined five witnesses which inter-alia did not include Shri Shyamal Dutta and on examination of two defence witnesses and submission of defence statement the enquiry officer held that the applicant was guilty of the charge. On the basis of a finding of the enquiry officer the disciplinary authority agreed with the findings of the enquiry officer taking a lenient view to make the applicant realise the misconduct which he has committed on his part, a minor punishment of censure was awarded and also the suspension period of the applicant was decided as not spent on duty for all intents and purposes.

3. The applicant though taken several contentions to challenge the impugned orders, at the outset, raised two contentions regarding non-examination of material witnesses and imposition of punishment on no evidence. The applicant has stated that Shri Shyamal Dutta who was a relevant material witness and the only witness to prove and support the allegation of his alleged misconduct of sleeping on duty has been withheld from the

74

proceedings of the enquiry, as neither he has been included in the list of witnesses nor was examined during the course of the departmental enquiry. It is also stated that without examining Shri Shyamal Dutta, his complaint made to the DCP, has been relied upon by the enquiry officer to come to the conclusion of guilt against the applicant. As such the applicant has been accordingly prejudiced and has been deprived of a reasonable opportunity to effectively defend himself by cross-examining the said witness with regard to the complaint of sleeping on duty. In support of his contention the learned counsel for the applicant has drawn our attention to the decision of the Hon'ble Apex Court in Hardwari Lal Vs. State of U.P. & Others, (1999) 8 SCC 582 where the petitioner was also charged for abusing his colleague while he was under the influence of liquor. The evidence of the employee who accompanied the appellant to the hospital would also bear upon the appellant's state of inebriation. In this conspectus, the Hon'ble Apex Court has come to the conclusion that non-examination of these witnesses who were the best person to speak the veracity of the allegation has resulted in denial of principles of natural justice and the material fact, i.e., charge against the petitioner therein has not been proved by any other evidence adduced or other material to support the allegations. In this conspectus, the learned counsel for the applicant states that in the departmental enquiry except the complaint of Shri Shyamal Dutta no evidence has been produced by the respondents to point out towards the guilt of the applicant as none of the five witnesses have deposed regarding the allegation of sleeping on duty levelled

against the applicant. The applicant in this background states that due to non-examination of the complainant his defence has been adversely affected and he has been deprived of a reasonable opportunity to defend. He also drawn our attention to the testimony of prosecution witnesses it is stated that not even a whisper has been stated by the witnesses to support the summary of allegation and the conclusion of the enquiry officer is rested upon presumption, suspicion and surmises without any evidence as such the present case is of 'no evidence' where he has been guilty of punishment. To support his contention, ratio of Hon'ble Apex Court in Union of India Vs. H.C. Goel, AIR 1964 SC 364 is cited.

4. The learned counsel for the respondents took exception to the contentions of the applicant and stated that the procedural rules have been followed in conduct of the departmental enquiry and the applicant has been punished on the basis of the evidence recorded during the course of the enquiry which has pointed out towards the guilt of the applicant. As regards non-examination of the material witnesses, it is stated that other evidence produced by the respondents was sufficient to support the allegations which inter-alia included the evidence of one of the staff posted at the residence of Mr. Dutta and the Police Officials. As regards the case 'no evidence' is concerned, it is stated that there is a sufficient evidence on record to hold the applicant guilty of the charge. With regard to the testimony of witnesses it is also pointed out that the applicant

has himself told them in the guard room, that DIB had checked him at 5.30 P.M. and had noted down his name and number.

5. The learned counsel for the respondents defended the orders passed by the respondents by stating that the same are reasoned and justified and have been passed in compliance of the principles of natural justice after following the rules on the subject and the Tribunal on judicial review cannot reappraise the evidence to take a different view.

6. We have given careful thought to the rival contentions of the parties and perused the material on record. As regards the plea of the applicant of non-examination of witnesses is concerned the same is well founded. We find that the allegations levelled against the applicant are regarding his sleeping on duty at the front gate of the residence of Shri Shyamal Dutta and these facts have been disclosed to the DCP and by way of a complaint made by Shri Shyamal Dutta which formed the basis of a departmental action against the applicant. We have also perused the list of witnesses and gist of evidences to be recorded in the enquiry and we find that in none of the five witnesses there is any material to indicate that they are going to depose the facts of the alleged charge against the applicant of sleeping on duty. Apart from it we find that the enquiry officer while coming to the conclusion of guilt against the applicant and to prove the charge has placed reliance on the complaint of Shri Dutta made to the DCP. Apart from this evidence there is nothing in the record in the form of

evidence of other witnesses in support of summary of allegations which has substantiated the charge of sleeping on duty against the applicant. As the material witness has been withheld and not examined by the respondents, despite his availability, without recording any reasons, and moreover placing reliance on his complaint without according an opportunity to the applicant to effectively defend the charge by cross-examination of said complainant, we hold that the enquiry is vitiated on account of non-examination of material witnesses. In this view of ours, we are fortified by the ratio Hardware Lal's case supra.

7. As regards the second contention of the regarding no evidence we are well aware of our jurisdiction. As it has been held in by the Hon'ble Apex Court in Kuldeep Singh Vs. The Commissioner of Police & Others, JT 1998(8) SC 603 that the Tribunal should not interfere in the matter of evidence but this interference can be permissible if the finding of the enquiry officer is perverse and is not based on any evidence. If the prudent test of reasonable man is applied to the present case and from the perusal of the evidence recorded in the departmental enquiry, we have no hesitation to observe that the finding of the enquiry officer is perverse and is based on no evidence. PW1, Shri Prabhat Singh has only proved the complaint made by the Shri Dutta; PW2, Inspector Mange Ram who has approved the directions given to the staff posted at VVIPs duty. PW3, Inspector Niyam Pal Singh has also proved the statement given by the applicant during preliminary enquiry. PW4 has proved the duty hours of the applicant and PW5 Shri Subhash

has only proved the fact that the applicant was not found at the residence of VVIP. Nowhere from the evidence of these witnesses it is transpired that they have stated anything about the alleged misconduct of the applicant of sleeping on duty. In this view of the matter, we hold that the conclusion arrived at by the disciplinary authority is not on the basis of the evidence of five prosecution witnesses but on the basis of the complaint of Mr. Dutta against which the applicant has not been given an opportunity to defend and has not been proved legally in the enquiry.

8. In view of the above circumstances and having regard to the reasons recorded and discussion made above, we set aside the orders of the disciplinary authority as well as of the appellate authority. The respondents are directed to accord all the consequential benefits to the applicant in accordance with law including treatment of the period of suspension as spent on duty. The OA is allowed in the above terms but without any order as to costs.

S.Raju
(SHANKER RAJU)
MEMBER(J)

V.K.Majotra
(V.K.MAJOTRA)
MEMBER(A)

/RAO/