

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2697/2000
New Delhi, this the 20th day of September, 2001

HON'BLE SH. V.K.MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Const. Kanwar Pal
(PIS No..28870943)
Presently working at
P.S. Narela (Bawana)
North West Distt. Delhi. Applicant
(By Advocate: Sh. Anil Singal)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
2. Joint Commissioner of Police,
Northern Range, Delhi
through Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
3. Addl. D.C.P.,
North West Distt.,
New Delhi. Respondents
(By Advocate: Sh. Ram Kanwar)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

This application has been filed under Section 19 of the AT Act challenging the orders of initiation of departmental enquiry, the summary of allegation, the findings arrived at by the enquiry officer as well as the final order of punishment passed by the disciplinary authority and also the appellate order passed by the appellate authority.

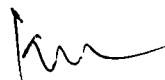
2. The facts, as alleged by the applicant, are that the applicant while posted at Police Station Ashok Vihar on 20.6.99, was found under the influence of alcohol on duty. He misbehaved with Chitta Munshi and Duty Officer and left the Police Station. He was marked absent vide D.D.No. 18-A dated 20.6.99, P.S. Ashok Vihar. He was not medically examined on that day. On the next day i.e. 21.6.99, he came to Police



Station Ashok Vihar for duty and he was again found under the influence of alcohol. Chitta Munshi Const. Shyam Sunder No. 884/NW and Duty Officer H.C.Vijay Kumar No.1474/NW informed SHO/Ashok Vihar that Const. Kanwar Pal No.2385/NW was under the influence of alcohol not to be detailed for duty. He was got medically examined at Hindu Rao Hospital through S.I. Narender Kumar. The Doctor opined vide M.L.C. No.20377 dated 21.6.99 that "the person has consumed alcohol but he is not under its influence."

3. On these allegations, a charegesheet was issued to the applicant and enquiry was conducted against him. During the enquiry four witnesses were examined. Thereafter, the Enquiry Officer framed the charges against the applicant on the same set of allegations, as mentioned in summary of allegations. Thereafter the Inquiry Officer submitted his findings to the disciplinary authority concluding therein that the charge levelled against the applicant is proved, whereupon the impugned order of punishment was passed by the disciplinary authority forfeiting his 5 years service permanently for a period of 2 years entailing proportionate reduction in pay and further directed that he will not earn increments of pay during the period of reduction and after the expiry of penalty period, the reduction will have no effect of his postponing his future increments of pay.

4. In the grounds to challenge the impugned orders, the applicant has submitted that first of all he has not been supplied the entire documents which has been used by the Enquiry Officer during the enquiry and only two documents, as annexed with the chargesheet was supplied as per Annexure A-2. Whereas during the enquiry the department has also used the

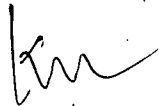


reports sent by SHO Haridarshan (Exhibited as PW 4/A) and DD Entry No.68 dated 21.6.99 (Exhibited as PW-3/A), Duty Roasters of staff (Exhibited as PW-2/B and PW-2/C) but these documents were not supplied to him.

5. The other ground as taken up by the applicant is that even the doctor who had examined the applicant medically, stated that he had consumed alcohol but is "not under its influence" whereas the charge against the applicant was that he was "under the influence of alcohol". Therefore, even initiation of enquiry against the applicant is against the material available on record and against the opinion given by the doctor.

6. It was further submitted that as the applicant was running absent since 20.6.99 till 22.6.99, therefore, the applicant came to the Police Station on 21.6.99 to inform about his illness and not for duty, it was not proper for the SHO to get the applicant medically examined for consuming alcohol unless he returns for duty from absence. Applicant also states that departmental enquiry was conducted in utter violation of principles of natural justice as the applicant could not effectively cross examine the prosecution witnesses in absence of documents whereas the same were exhibited and relied upon for the prosecution by the enquiry officer in order to prove the charges against the applicant.

7. Applicant further submitted that the findings of the enquiry officer are totally biased perverse and against the material available on record since the enquiry officer had not taken into consideration even the opinion of the Doctor where the Doctor has mentioned that the applicant was not under the



influence of liquor and only a faint smell was there. The charges framed against the applicant was also that the applicant was under the influence of alcohol and since the Doctor had concluded that the applicant was not under the influence of liquor so the enquiry officer could not say that the applicant was under the influence of liquor.

8. Similarly the disciplinary authority also did not apply his mind and in one line dismissed the explanations given by the applicant and awarded major punishment to the applicant.

9. Respondents who are contesting the OA submitted in their reply that the applicant was proceeded departmentally for his misconduct to the fact that on the relevant day he was found under the influence of alcohol on duty and have misbehaved with Chitta Munshi and Duty Officer and the applicant had left the police station without obtaining any leave and he was marked absent and on the next day he was found under the influence of liquor he was medically examined and the Doctor has found that though the applicant is not under the influence of liquor but still he said that he is having faint smell of liquor. Thereupon a regular enquiry was held the applicant was afforded the opportunity as required under the Delhi Police Rules and the enquiry officer came to the conclusion that the charges against the applicant is proved and agreeing with the same the disciplinary authority has punished the applicant. The appeal against the order of disciplinary authority was also taken up by the applicant and the appellate authority had taken a lenient view and reduced the penalty. Respondents also submitted that all the relevant documents, as asked for by the applicant, has been supplied with the



applicant and the enquiry was held strictly in accordance with the rules and no prejudice have been caused to the applicant in any manner and the OA deserves to be dismissed.

9. We have heard the learned counsel on either side and have perused the material placed on record.

10. The learned counsel for the applicant submitted that the documents which have been referred to by the enquiry officer in his enquiry report, which are produced through PW-3 have not been supplied to the applicant and non-supply of documents caused a prejudice to the applicant as has been held in OA-670/2000 passed on 9.3.2001 by a coordinate Bench of this Tribunal of which one of us (Shri V.K.Majotra, M (A)) was a party. The aforesaid Tribunal's order dated 9.3.2001 was followed by the judgement of the Apex Court in State of Tamil Nadu Vs. Thiru K.V. Perumal & Ors. reported as JT 1996 (6) SC 604 in which it has been held that the non-supply of documents vitiates the enquiry if the prejudice is caused to the delinquent officer. It is also contended by the applicant that the non-supply of the documents has greatly prejudiced him. Reliance has also been placed on a case of Rattan Lal Ex-Constable Vs. The State of Haryana and Ors. reported as 1983 (2) Vol. 33 SLR 159 which was also a case of a police Constable who has also taken alcohol but was not found under the effect of alcohol by the authority and it was observed that he was neither on duty nor was misbehaving in any other manner, which runs as follows:-

"3..... Otherwise also I am of the considered view that mere consumption of alcohol-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

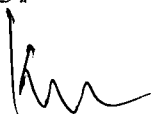


of liquor without anything more, does not, to my mind, render the employee to any such disciplinary action. The learned Additional Advocate-General is not in a position to bring to my notice any precedent or principal on the basis of which it can be said that mere consumption of liquor by an employee, particularly when he is not on duty, amounts for misconduct or misbehaviour. 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."

11. In reply, Sh. Ram Kanwar, learned counsel for respondents submitted that the charges against the applicant are not of merely consuming alcohol but he misbehaved with Chitha Munshi and Duty Officer and left the police station. On next day, i.e., on 21.6.99 he came to police station Ashok Vihar for duty and he was again found under the influence of alcohol. It was on two occasions that he was found under the influence of liquor and that is why he was got medically examined and doctor has given a report that "applicant has consumed alcohol and that there was a faint smell of alcohol in breath."

12. Since the allegation regarding misbehaviour with Chitha Munshi and Duty Officer are proved on record so applicant is rightly punished. As far the facts with regard to the grant of supply of documents, the applicant has been provided all the required documents, namely, DD entry No.68, PW-3 and detailed roster.

13. We have heard the learned counsel for the parties and have gone through the records.



14. As regards the documents which have been produced through PW-3 and PW-4, we find the same has not been supplied to the applicant. The document PW-3A and PW-2B is regarding the roster of duty staff in which the duty of the applicant is detailed. Since the plea of the applicant is that he had gone to police station only to inform about his leave and he was not well so he should not have been sent for medical examination as he was not on duty. The applicant has also not misbehaved with Chitta Munshi while on duty. The applicant in his ground to challenge the impugned order has specifically stated in para 5.1 that he has not been supplied the report of SHO Haridarshan which has been exhibited as PW-4A and DD entry No. 68 which has been exhibited as PW-3A and duty roster of staff exhibited as PW-2B and PW-2C.

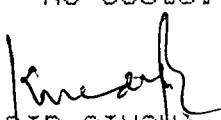
15. In reply to this, the respondents in their counter affidavit have simply stated that all these documents have been supplied. There is nothing on record to show whether these documents have been supplied to the applicant because the list of documents which has been annexed alongwith the statement of allegations show that only MLC and a copy of DD entry No.18-A dated 20.6.99 has been supplied whereas the enquiry report shows that besides these, various other documents have also been relied upon by the enquiry officer. So on this ground we find that the applicant has been prejudiced by non-supply of relevant documents which has been used by the enquiry officer in arriving at his findings. So on this ground the enquiry is vitiated and the judgment cited by the applicant in OA-670/2000 fully applies to the facts of the case and the enquiry report stands vitiated to that extent.




16. The learned counsel for the applicant has also referred that even as per the MLC the applicant was having a faint smell of alcohol and he was not under the influence of liquor whereas the judgment referred to by the learned counsel for the applicant himself in Rattan Lal vs. State of Haryana and Others (supra) it has been held that mere consumption of alcohol does not amount to any misconduct known to the service rules particularly when the official is not on duty. In this case also the applicant even on the date preceding to the day of incident was on leave and had not joined his office and according to the applicant he had gone to extend his leave but he was sent for medical examination, that also shows that the applicant has not yet joined his duty and he was not under the influence of liquor since he was merely having a faint smell of liquor. So on this ground also we find that the findings arrived at by the enquiry officer cannot be sustained and order of punishment based on those findings, also cannot be sustained.

17. In view of the above circumstances, the OA is allowed. Impugned orders of punishment cannot stand and the same are hereby quashed. We direct that the respondents shall restore the pay and salary of applicant within a period of one month from the date of receipt of a copy of this order.

No costs.


 (KULDIP SINGH)
 Member (J)
 "sd"


 (V.K. MAJOTRA)
 Member (A)