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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.662/2000

New Delhi this the 27th day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ct. Narinder Kumar,
S/o Shri Ajit Singh,
R/o Vill. Kharkhar, P.S. Sampla,
Tehsil Bahadurgarh,
Distt. Jhajhar (Hr.)

...Applicant

(By Advocate Shri Arun Bhardwaj)

~Versus~

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. The Jt. Commissioner of Police,
New Delhi Range,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

3. The Addl. Deputy Commissioner of Police,
East District,
Delhi.

...Respondents

(By Advocate Mrs. Meera Chhibber)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, a Constable in Delhi Police, had been proceeded against in a departmental enquiry on the allegation that on 9.3.98 one Smt. Santosh Kumari made a complaint to the SHO PS Gita Colony alleging that the applicant (Constable Narinder Kumar) reached at her residence in a drunken condition and knocked the door as he wanted to take rest. On making a PCR call the applicant ran away from the place. After recording evidence the enquiry officer held the applicant guilty of the charge. On the basis of the finding of the enquiry officer vide an order dated 19.11.98 the disciplinary authority taking a

lenient view awarded a major punishment of forfeiture of three years approved service permanently with cumulative effect and also treated the period of suspension as not spent on duty. The punishment was carried in an appeal and the appellate authority vide an order dated 3.11.99 maintained the punishment. The applicant assails these orders in this OA.

2. We have heard the learned counsel of rival parties and perused the material on record. The first contention taken by the applicant is that the present case is of a mistaken identity as in the PCR message given by the complainant Smt. Santosh Kumari the applicant had been described as a Head Constable and during the course of departmental enquiry also this fact was affirmed by PW-2 the SHO. According to the applicant PW-4 ASI Vedpal also described the person who visited the place of the complainant as Head Constable Narinder Kumar. In this conspectus the applicant contended that as DW-5 clearly stated that the applicant was with him in his village at the time of occurrence he is not the person who had visited the place of the complainant in a drunken condition. We have perused the evidence of the witnesses not for the purpose of re-appraisal but to ascertain the fact of mistaken identity. In the testimony of PW-1 Santosh Kumari it had come on record that the applicant is the same person who had visited her place in a drunken condition and in the departmental enquiry the complainant identified him. As such we are of the opinion that the identity of the applicant was very much established during the enquiry and

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also during the fact finding enquiry made by SHO, Gita Colony where the applicant was also identified. As such this contention of the applicant is hereby rejected.

3. It is next contended by the applicant that before holding the enquiry PW-1 ACP Madhup Tiwari conducted a fact finding enquiry wherein an alleged admission of the applicant had figured regarding the fact of being drunken and utterance of few words to the complainant. The said report was forwarded to the disciplinary authority and on which the applicant was placed under suspension. The applicant contended that the aforesaid report was not part of the summary of allegation as it had not figured in the list of documents. According to the applicant despite his objection to non-supply of this report the same was not provided to him with the result he could not effectively cross-examine the said witnesses resulting in denial of reasonable opportunity to him. According to the applicant the aforesaid report is relied upon by the enquiry officer to hold him guilty of the charge as well as by the disciplinary authority to impose a major punishment on him. On the other hand, the respondents refuted this contention by contending that the report of the ACP was only a forwarding note and there was nothing new in this report except a reference to the admission of the applicant made before the ACP and these facts were very much known to the applicant during the testimony of the ACP recorded during the course of the departmental enquiry, wherein the applicant had been afforded a proper opportunity to cross examination. As such no prejudice has been caused to the applicant by non-supply of this report. We have examined this aspect of the matter. It is true that the ACP in his

report had mentioned about the alleged admission of the applicant made before him prior to the departmental enquiry and submitted his note to the disciplinary authority on which the applicant was placed under suspension. There is no new material contained in the report except the alleged admission of the applicant. This fact of admission was narrated by the ACP his testimony recorded during the course of departmental enquiry to which the applicant had been afforded a reasonable opportunity to defend by way of effective cross-examination. After having availed the opportunity of cross-examination, in our view the applicant has not been prejudiced by non-supply of the report of ACP. The enquiry officer while coming to the conclusion of guilt against the applicant has only referred to the report and to high light the alleged admission of the applicant made before the senior officer. The aforesaid fact of admission has already been brought in the testimony of the ACP. In our view the enquiry officer has referred to the report of the ACP with a view to bring the fact of admission made by the applicant. As such in our view sufficient opportunity had been given to the applicant to controvert this report. According to us, there is no procedural illegality in the enquiry. Accordingly the reliance made by the disciplinary authority on this report is also with reference to the admission which the applicant had failed to prove as false or fabricated. The contention of the applicant as such is rejected in view of the ratio of Hon'ble Apex Court in S.K. Sharma v. State Bank of Patiala, JT 1996 (3) 722, wherein it has been held that unless the applicant establishes that prejudice has been caused even non-compliance of procedural law would not vitiate the departemental enquiry.

4. It is next contended that one of the charges against the applicant is that he under the influence of liquor reached the residence of the complainant. In this regard it is contended that though the applicant was subjected to a MLC and was examined by the Doctor wherein the result was negative and the applicant was not found to have consumed alcohol. According to the applicant's counsel MLC was not formed part of the departmental enquiry record as this could have proved the innocence of the applicant. According to the applicant the conclusion of the enquiry officer regarding this part of the charge is based on 'no evidence' and as the enquiry officer had observed that the allegation that the applicant was tipsy could not be proved in absence of medical examination and is proved on other circumstances is based on suspicion and surmises. The disciplinary authority while agreeing with the findings of the enquiry officer where the charge of being tipsy had not been proved did not follow the requisite procedure laid down under the rules by not stating reasons/disagreement and affording a reasonable opportunity of show cause notice. On the other hand, respondents contended that there is sufficient evidence on record to show that the applicant was under the influence of liquor when he had visited the house of complainant. According the learned counsel of the applicant the enquiry officer had not exonerated the applicant of this charge but proved the charge on account of his indecent behaviour in late hours and also relied upon his admission made before the senior office, i.e., ACP relied the fact of his being drunk at the time of his visit to the house of the complainant. In the departmental enquiry, in our view, the strict rules of evidence are not applicable. The rule

which is to be applied is of pre-ponderence of probabilities. Even on hear-say, circumstantial evidence the enquiry officer can come to the conclusion of guilt against the applicant. It is only when no evidence has been adduced to support the charge in the enquiry the Tribunal can interfere by way of judicial review. In the instant case the complainant had clearly stated that the applicant was in a drunken state and this fact is further corroborated by the evidence of PW-5, who is a senior officer having no grudge against the applicant, in front of whom the applicant admitted that he was drunk. As such we find that the enquiry officer through his finding rightly came to the conclusion of guilt against the applicant on this part of charge. The Tribunal has no jurisdiction to interfere in a departmental punishment if there is some evidence to support the charge. As such, as there is an evidence against the applicant on this part of charge, we are precluded from interfering with the same by way of judicial review. As such this contention of the applicant is rejected.

5. It is next contended that the alleged admission made by the applicant before the ACP is not an admission as per Section 24 of Cr. PC and also illegal in view of the provisions of Evidence Act. It is contended that the aforesaid admission has not been reduced in writing by the ACP and the same is fabricated against him. On the other hand, it is contended by the respondents that there is no requirement to reduce admission in writing when the senior officer states this fact of admission. No malafides have been alleged by the applicant against the

ACP and no material is brought on record to show that either the witness is telling lie or is inimical to the applicant.

6. We have given careful thought to this contention and agree with the contention of the respondents that a departmental enquiry is not a trial and as per Rule 20 the Delhi Police (Punishment & Appeal) Rules, 1980 the enquiry officer is not bound to follow the provisions of Cr.PC or Indian Evidence Act in departmental enquiry. Apart from this, it has already been settled by the Apex Court in a number of judgments that strict rule of evidence would not apply in the departmental enquiry and it is the pre-ponderence of probabilities which shall have the application. In absence of any material to prove malafide against the ACP we are not agreeable to the contention of the applicant that in the absence of the admission being reduced in writing the same is fabricated and false. A senior officer who is not proved to be inimical towards the applicant is not to tell a lie in the matter of alleged admission made before him by the applicant, a subordinate officer, without any personal grudge, which could not be established by the applicant in the DE. As such we are of the considered opinion that the alleged admission of the applicant before the ACP which has been relied upon by the respondents is not proved to be false or fabricated, rather the same has been proved to be correct. In this view of ours we reject this contention of the applicant.

7. It is also contended that the disciplinary authority while awarding a major punishment upon the applicant took into account his previous bad record to

inflict upon him the punishment which is contrary to Rule 16 (xi) of the Delhi Police (Punishment and Appeal) Rules, 1980. According the applicant unless the previous record is made a specific charge and an opportunity is afforded to the applicant to defend the same it could not be taken into consideration. On the other hand, the respondents contend that despite grave misconduct the disciplinary authority with a view to take a lenient view perused his previous record where no major or minor penalty exist and in this view he took a lenient view and awarded a major punishment to the applicant. In our view it is only when the disciplinary authority awards severe punishment upon the applicant Rule 16 (xi) ibid would have any application. In the instant case firstly the previous record had not been taken into account to award a severe punishment but rather taken into account for a lenient view and secondly a major punishment of forfeiture of three years' service permanently has been awarded, which, to our considered view, is not a severe punishment. As such Rule 16 (xi) will not have any application in the instant case. As such the contention of the applicant is rejected.

8. It is lastly contended that the appellate authority had issued a non-speaking order without dealing with the contentions of the applicant. The respondents' counsel refuted this plea by stating that the order is reasoned and had been passed after considering all the contentions of the applicant. In our view the order passed by the appellate authority is reasoned as per Rule 25 of the Rules ibid and the appellate authority has taken into consideration the contentions of the applicant. It is not necessary that each and every contention of the applicant

should be reproduced and controverted in the appellate order. What is to be seen is whether there is an application of mind by the appellate authority. As such this contention of the applicant is also rejected.

9. No other legal grounds have been taken by the applicant to assail the impugned orders.

10. Having regard to the discussion and reasons made above, we find no merit in the application and the same is rejected, but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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