

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1342/89

New Delhi this the 22nd Day of April, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member (A)
Hon'ble Mr. B.S. Hegde, Member (J)

Shri Sumer Singh,
S/o Sh. Suraj Bhan,
R/o Vill. & P.O. Guraura,
Distt. Mohinder Garh.
Haryana.

Applicant

(By advocate Shri Shankar Raju)

versus

1. The Delhi Administration,
through its Chief Secretary,
5, Alipur Road, Raj Niwas Marg,
Delhi-54.
2. The Commissioner of Police Delhi,
M.S.O. Building, Police Headquarters,
I.P. Estate, New Delhi.
3. The Dy. Commissioner of Police,
II Ird Bn. D.A.P.,
New Police Line,
Kingsway Camp,
Delhi.

Respondents

(By advocate Mrs. Avnish Ahlawat)

O R D E R
delivered by Hon'ble Mr. B.N. Dhoundiyal, Member (A)

In this O.A. Sh. Sumer Singh, a Head Constable in Delhi Police challenges the order of disciplinary authority dated 8.12.1987 awarding him forfeiture of three years approved service, the order of appellate authority dated 22.4.1988 rejecting his appeal and the order of revisional authority dated 29.3.1989 rejecting his revision petition.

The admitted facts of the case are as under.
Head Constable Sumer Singh alongwith Sh. Surinderpal Singh were deputed on guard duty at T.B. Hospital, Kingsway Camp. On 1.12.1986 about 6.30 A.M. an accused

6W

in case FIR No. 328/86 under section 328/379 I.P.C. who was admitted in T.B. Hospital escaped from the custody of Constable Surinderpal Singh. Head Constable Sumer Singh the Incharge Guard was not present at the time of incident. He recorded departure to N.P.L. vide D.O.No.5 dated 30.11.1986 at 8.25 a.m. and had not returned to the guard by 10.45 a.m. on 1.12.1986. He was marked absent vide D.O.No.36 and resumed his duty vide D.O.No.75 dated 1.12.1986 after absenting from duty for one day 6 hours and 20 minutes.

Heard the learned counsel for the parties and perused the record in the case file. The learned counsel for the applicant has challenged the orders on these grounds; (a) the summary of allegation and the charge are different and the applicant had no opportunity to defend himself against the charges which were not included in the summary of allegation. In the case of escape of prisoner, rule 29 applies add in accordance with rule 29(3), in such cases it is for the Addl. Commissioner of Police to take a decision whether the concerned official should be tried in a criminal enquiry under Section 221, 222 or 223 I.P.C. or to initiate a departmental enquiry. According to him in this case, the Addl. Commissioner did not pass any such order. Also the enquiry officer has crossed examined the defence witnesses which goes much beyond the scope allowed under Rule 16(5) of Delhi Police (Punishment & Appeal) Rules. The applicant had duly recorded in the diary dated 30.11.1986 that at 8.25 a.m. he was leaving for new police lines as there were no facilities for bathing in T.B. Hospital. Thereafter, he fell sick and was treated

AN

by the doctor of C.G.H.S. Hospital who recommended rest for two days. He had produced a defence witness Sh. Nanu Ram who had averred that he informed the Inspector ~~Regd.~~ about the illness of the applicant. Another Head Constable Shan Shyam was present and according to the applicant he had taken over the charge of the accused. The main ingredient of the summary of allegations as well as the charge are that on the crucial day when the prisoner escaped, the applicant was not present at the place of his duty. It can't therefore, be said that some new charge has been added against which the applicant could not produce his defence. He has also contended that none of the impugned orders passed by the disciplinary, appellate and the revisional authority are speaking orders. The learned counsel for the respondents has drawn our attention to Rule 29(3) which provides that if the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Sections 221, 222 & 223 I.P.C. has been committed, the Police Officer concerned shall be prosecuted in a criminal court, unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally. If the enquiry establishes a breach of discipline or misconduct not amounting to an offence under any of the sections of the I.P.C. mentioned above, the case shall ordinarily be dealt with departmentally. This being the position, it was not necessary for the respondents to obtain an order from the Addl. Commissioner of Police. Rule 15(2) is also not attracted as this was

3w

not a cognizable offence by a Police Officer of subordinate rank in his official relations with the public.

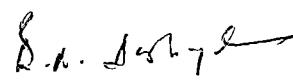
We have seen the enquiry report and the deposition of the witnesses. Under Rule 16(5) the enquiry officer is authorised to ask questions to clear ambiguities or to test their veracity made by the respondents. We do not think that in this case the enquiry officer has gone beyond these limits.

The whole issue hinges on the fact that having fallen sick, the applicant did not ^{not} notify his Senior Authorities that he would not be able to discharge his duties so as to enable them to depute some other officer of the responding rank. It is clear from the D.O. entry made by the applicant at the time of his joining or the statement of Sh.R.D. Mittal Respondent No.1 that the applicant failed to report to the Respondent No.1 about his illness and inability to discharge his duty. Had the applicant informed his seniors about his unintended absence, his replacement would have been sent to supervisory guard. In the absence of any supervision, however, the accused managed to escape from the custody of Constable Suraj Pal Singh. Thus this episode was directly attributable to the negligence of the applicant.

Having considered all the facts and circumstances of the case, we do not ~~see~~ ^{find} merit in the ~~case~~ and is hereby dismissed.

No costs.


(B.S. HEGDE)
MEMBER (J)


(B.N. DHOUDIYAL)
MEMBER (A)

/vv/