

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

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Date of Decision:

16.3.93

OA 1447/89

JAI GOPAL

... APPLICANT.

Vs.

DELHI ADMN. & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SHRI R.P. KATHURIA.

For the Respondents

... SHRI G.C. LALWANI.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

The applicant Shri Jai Gopal, a dismissed Constable (Driver) of the Delhi Police, has assailed the order dated 27.2.89 (Annexure-F), dismissing him from service, <sup>an</sup>which has been upheld by the Appellate Authority on 12.5.89 (Annexure-H), and he has prayed that he be reinstated in service with restrospective effect of consequential benefits.

It is alleged that Constable (Driver) Jai Gopal was deployed for pay distribution duty to PTS Jaroda Kalan on 30.4.88 alongwith other staff <sup>an</sup>on Govt. Vehicle, Mini Bus No.DEP 3299. He stopped the vehicle near a Wine Shop in Uttam Nagar and purchased a bottle of liquor and then drove the vehicle to PTS Jaroda Kalan. At about 4 p.m.,

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Head Constable Dhruva Narain asked him to proceed to the Security Lines but the applicant did not pay any attention. He moved the way with the vehicle leaving the Head Constable at PTS Jaroda Kalan, who later on came to Security Lines in a DTC bus late at night with cash. The applicant is thereafter alleged to have returned to the Security Lines at 00.50 hours in the night and was found smelling of liquor. He was medically examined and the Doctor, in the RML Hospital, opined vide MLC No.E-37321/88 that the applicant was smelling for alcohol. The applicant contends that since he has left the log book of the vehicle at the petrol pump Parliament Street by mistake, he went back to collect the same after bringing it to the notice of the Head Constable Dhruva Narain. On his return to PTS Jaroda Kalan, he found that Dhruva Narain has already left the place. On his way back to the Security Lines, the applicant suddenly suffered with stomach pain and consumed the Ayurvedic medicine named "Sura" to get relief. He reported back to the Security Lines vide DD No.55 dt. 30.4.88.

The respondents contested this application and in their counter affidavit have stated that the applicant had purchased a bottle of liquor near Uttam Nagar and thereafter proceeded to PTS Jaroda Kalan. After disbursing the pay at about 4 p.m. Head Constable Dhruva Narain asked him to proceed Security Lines, but the applicant did not

pay any attention and moved off with the vehicle. He turned up on the Security Lines at 00.50 hours on 1.5.88 in the state of absolute drunkenness. The Doctor, examined him and found that he was smelling of liquor. A departmental enquiry was conducted as per rules, and the EO found the charges fully established, on the basis of which the applicant was ordered to be dismissed from service. This order has been upheld in appeal.

We have heard Shri R.P. Kathuria, learned counsel for the applicant, and Shri G.C. Lalwani, learned counsel for the respondents, and have examined the materials on record.

The first ground taken by Shri Kathuria is that no blood test, to determine the quantum of alcohol in the applicant's blood stream, was ordered and the medical report is not admissible.

From a perusal of the findings of the EO, it is clear that CMO, RML Hospital, had given MLC No.E-37321/88 dated 1.5.88 after examining the applicant, where it was stated that there was a smell of alcohol <sup>in</sup> emanating from the applicant as also poor coordination of movements. Clearly therefore, the applicant was under the influence of liquor. The medical certificate issued by the CMO, RML Hospital, is sufficient for the purposes of a departmental enquiry, and

does not need to be supported by a blood test. The applicant's defence, that he took Sura, as medicine, which contained some alcohol and which might have given the smell emanating from him, is much too farfetched to be believed, particularly in absence of any medical prescription to support it. The EO has correctly observed that if the applicant had been in a normal condition, there was no point in leaving behind the Head Constable Dhurva Narain at Jaroda Kalan and moving away with the vehicle. This ground therefore fails.

The second ground advanced is that the respondents have taken into consideration the previous record of punishment inflicted on the applicant, <sup>M</sup> although the previous record has not been made a specific charge in the summary of allegations or in the charge itself, which is in contravention of Rule 16(1) Delhi Police (Punishment & Appeal) Rules, 1980. This argument is also not tenable, because from a perusal of the dismissal order dated 27.2.89, passed by the Disciplinary Authority, it is clear that he has found the charges levelled against the applicant fully proved, and without even having to refer to the earlier punishment, has held that the applicant's misconduct amounts to severe violation of Police discipline and continuity in service of such a person would effect the discipline in the force in general. The fact that this was the second time that the applicant had been found guilty and even earlier he had been awarded a major penalty for causing accident after taking liquor

while on duty, merely indicated that the applicant did not seek to draw any lesson from his previous punishment and hence <sup>the</sup> need for making the previous record of punishment, a specific charge in the summary of allegations, or in the charge itself, does not vitiate the conduct of the proceedings or the order of the Disciplinary Authority.

The third ground taken by Shri Kathuria is that under Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, dismissal from service should be resorted to only where the misconduct is continued and indicates incorrigibility and complete unfitness for police service. In this connection, he has cited a Delhi High Court's decision, reported in (1984 (2) SLR 149), Sukhbir Singh Vs. Dy. Commissioner of Police, wherein it has been held that misconduct must be grave and continuing indicating incorrigibility and complete unfitness for Police service. Where the offence was only temporary mis-appropriation of utensil from the mess, the punishment of dismissal was too severe and not commensurate with the misconduct. In the instant case, it is clear that the applicant was entrusted with a responsible task, in the course of which he went to purchase a bottle <sup>of</sup> liquor, <sup>flagrantly</sup> ~~considerately~~ dis-regarded his superiors' orders, unauthorisedly took away the vehicle and then returned to Security Lines at 00.50 hours smelling of alcohol. Coupled with his past misconduct, it is clear that the applicant is of <sup>an</sup> ~~an~~ incorrigible type, and the

respondents have correctly held that the continuance of such a person in the Police Force, would effect the discipline of the force in general and his own credibility as a Police Officer in particular. Under the circumstances, the punishment of dismissal from service is wholly commensurate with the applicant's continued misconduct, and this ground, therefore, fails.

Lastly, Shri Kathuria contended that the applicant was not on duty when he was found to be smelling of alcohol. This contention also fails because it is clear that the applicant went to PTS Jaroda Kalan at about 4 p.m. to disburse the pay, alongwith other staff, in a Govt. vehicle. On his way, he stopped the vehicle near Uttam Nagar and purchased a bottle of liquor, and after disbursing the pay, when Head Constable Dhruva Narain asked the applicant to proceed to Security Lines, the applicant dis-obeyed that order, drove off with the vehicle leaving the Head Constable Dhruva Narain, and finally turned up at the Security Lines only at 00.50 hours in the night smelling of liquor. The plea that the applicant was not on duty at 00.50 hours, when he was medically examined and found to be smelling of liquor, cannot be accepted, because his entire conduct, from the time he purchased the liquor bottle on the way to PTS Jaroda Kalan amounts to violation of Service Rules and his superiors' orders.

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Under the circumstances, no interference<sup>M</sup> in the  
impugned orders is warranted, and this application is  
accordingly dismissed. No costs.

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

*J.P. Sharma*  
( J.P. SHARMA ) 16.3.93  
MEMBER (J)