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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.724/89

New Delhi this the 9th Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)

Shri B.S. Hegde, Member (J)

Lachman Dass son of
Shri B.L. Sharma,
r/o 465, Subhash Road,
Gandhi Nagar, Delhi.

...Applicant

(By Advocate Shri A.S. Grewal, though none appeared)

Versus

1. Lt. Governor of Delhi,
through Chief Secretary,
Delhi Administration, Delhi.
2. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi.
3. Additional Commissioner of Police (Range)
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi.
4. Deputy Commissioner of Police,
East District,
Krishna Nagar, Shahdra,
Delhi.

...Respondents

(By Advocate Shri D.N. Goberdhan)

Order(Oral)

Mr. N.V. Krishnan:

This case is listed at serial No.7 in today's cause list for peremptory disposal. We have heard the learned counsel for the respondents and proceed to pass final orders.

2. The applicant, a Sub Inspector of Police, under the Delhi Police has filed this O.A. aggrieved by the penalty imposed on him by the Annexure 'C' order dated 24.07.1987 of the fourth respondents - the Deputy Commissioner of Police in a disciplinary proceeding which was

initiated against him on the basis of the Annexure 'B' charge. The penalty imposed was forfeiture of 5 years' approved service permanently but treating it as a qualifying service towards pension. The charge against the applicant was that he tried to misbehave with the wife of Sh. Hansraj when he knocked at his house on the night between 7/8.1.86 and that this was done while he was under the influence of drink. An enquiry Officer was appointed who has submitted the enquiry report. This was considered by the disciplinary authority and the above penalty was imposed. The appeal and the subsequent revision filed by the applicant have been dismissed by the Annexure 'D' and Annexure 'E' orders dated 1.3.88 and 31.5.88 respectively.

3. The applicant has challenged these orders on the following principal grounds:-

- i) The proceedings have been initiated without instituting in the first instance a preliminary enquiry.
 - ii) The principal prosecution witnesses have not been deposed against him.
 - iii) In fact even the complainant Hansraj and his wife have not deposed against him.
 - iv) No opportunity was given to him to make a representation against the proposed punishment.
 - v) The order is defective, as it does not indicate whether the punishment would entail reduction in pay or not.
 - v) That the punishment is too harsh.
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4. We have heard the learned counsel for the respondents. He points out that a detailed enquiry has been held in accordance with the provisions of law. The enquiry officer has held that the prosecution witnesses other than the official witnesses, have, no doubt, not lent support to the prosecution story because they have ^{been} won over, as they reside in the same mohalla as the applicant. However, the enquiry officer has relied on the evidence of the official witnesses, i.e., Constable Ramesh Chander, Inspector Daryao Singh and Head Constable Jai Pal Singh on the basis of which a D.D. entry was made which was investigated. It is also pointed out that the medical examination of the applicant revealed that he was under the influence of drink. The plea of the applicant that he was under treatment for ulcer and the Doctor had prescribed the medicine 'Amrit Sanjeevani Sura' which contain 30% of alcohol has not been accepted by the Enquiry Officer and the disciplinary authority. In the circumstances he contends that the charge has been proved against the applicant and the OA deserves to be dismissed.

5. We have carefully perused the records and considered the arguments advanced by the learned counsel for the respondents. We notice that this is not a case without evidence. There are three witnesses belonging to the Police Department. ^{fact that} The other witnesses have not testified against the applicant should not, necessarily, lead to the conclusion that the charge against the applicant has not been proved. The enquiry officer has come to the conclusion that non-official witnesses have, been won over and he

has placed reliance on the testimony of the Police witnesses. This has been endorsed by all superior authorities. We, therefore, do not find any justification for our interference in the conclusion drawn by the authorities.

6. The second ~~other~~ point raised by the applicant which merits consideration is that he has not been given an opportunity to make a representation against the penalty proposed to be imposed on him, as required under Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980. Respondents have pointed out that the relevant clause of Rule 16 has been substituted by the Delhi Administration Notification No.5-8-85/Home(P)Estt.(I) dated 4.9.86 which provides that the penalty specified in Rule 5 (i) to (vii) which includes the penalty imposed in this case may be imposed on the Police Officer and that it shall not be necessary to give the Police Officer any opportunity of making representation on the penalty proposed to be imposed. It is, therefore, denied that there was no contravention of any statutory rules.

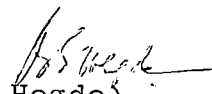
7. It is true that the original order dated 24.7.87 (Annexure C) imposed the penalty of forfeiture of five years' approved service. What its effect on pay would be was not clarified. The applicant states in ground (i) in para 5 that the order is defective and it should be quashed, as the order never directed that it would entail reduction in pay. Nevertheless, in para 4 he states with reference to the Annexure 'C' order that it entailed reduction of pay. As a matter of fact, this clarification was given by the disciplinary authority shortly

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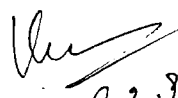
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thereafter on 21.8.87 as stated in the reply of the respondents. The applicant knew what the full penalty was, as is clear from the appellate order (Annexure 'D') which refers to his appeal against forfeiture of service and proportionate reduction of pay. Therefore, we find no merit in this argument.

8. • The plea of the applicant that penalty imposed is harsh cannot be considered by us, as this is a matter which is entirely left to the executive for an appropriate decision. In the circumstances, we dismiss this O.A. No costs.


(B.S. Hegde)
Member(J)

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9.3.87
(N.V. Krishnan)
Vice-Chairman