

15A

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1983/88

New Delhi this the 10th Day of June, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Pooran Singh,
son of Sh. Kulfi Ram,
R/o Village & P.O. Kiwana,
PS Shambhalka, Distt. Karnal,
Haryana.

...Applicant

(By Advocate Sh. D.K. Rastogi)

Versus

Union of India through:

1. The Administrator,
Union Territory of Delhi,
Raj Niwas, Delhi-54.
2. The Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi-110 002.
3. Sh. Mansoor Ali Sayed,
Addl. Dy. Commissioner of Police,
South District, Hauz Khas,
New Delhi.
4. Sh. O.P. Yadav,
Station House Officer,
Ambedkar Nagar,
New Delhi.
5. Sh. Dalip Singh,
Sub Inspector, C.I.D.(SB)
CID, Police Headquarters,
I.P. Estate,
New Delhi-110002.

...Respondents

(By Advocate Sh. B.R. Parashar)

ORDER

Mr. N.V. Krishnan:-

The applicant was a Constable in the Delhi Police. In disciplinary proceedings, he was dismissed from service by the order dated 15.2.88 (Annexure A-10) by the Additional Deputy Commissioner of Police, South Delhi (Respondent No.3). An appeal against that order has been rejected by the order dated 1.7.88 (Annexure A-11) by the Additional Commissioner of Police. This O.A. has been filed to set aside the Annexures A-10 and A-11 impugned orders of the

disciplinary authority and the appellate authority respectively and to direct the respondents to treat the period of suspension from 12.3.87 to 23.4.87 as a period spent on duty.

2. During the pendency of this O.A., the applicant died on 8.6.92. Therefore, Smt. Saroj, w/o the deceased and five other children (3 daughters and 2 sons) applied for substitution of their names as legal heirs in place of the deceased vide MP-2330/92. The M.P. was allowed and the legal representatives have been brought on record by the order dated 28.7.93. For the sake of convenience, the deceased employee is referred to as the applicant in the order.

3. The respondents have filed a reply contesting the claims.

4. We have heard the learned counsel for the parties and perused the records.

5. The summary of allegations against the applicant (Annexure A-4) is as follows:-

"It has been alleged against you, Ct. Puran Singh No.1393/SD that on 12.3.87 at about 7.20 P.M. while you were posted at P.P. Malviya Nagar P.S. Hauz Khas under the influence of liquor you abused SI Dalip Singh of Special Branch and used filthy language under the influence of liquor. It has further been alleged against you that you also tried to manhandle SI Dalip Singh and created a scene giving very bad impression to the Public.

The above acts on your part amounts to gross misconduct and unbecoming of a Police Officer which renders you liable for Departmental action U/s 21 of the D.P. Act, 1978."

U

The list of witnesses and the list of documents by which the charge was to be proved have been specified in the summary of allegation.

6. The impugned orders are assailed on the following principal grounds:-

- i) The charge is vague and non-specific as it does not indicate clearly the filthy abuses used by the applicant.
- ii) The allegation that the applicant was under the influence of liquor, has not been proved.
- iii) The medical report of Dr. Sen Gupta shows that the applicant was not under the influence of liquor.
- iv) The applicant was not given a reasonable opportunity to defend himself and there was no justification to proceed ex parte.
- v) The order of the disciplinary authority (Annexure A-10) is arbitrary and does not indicate the reasons for the decision taken by him.
- vi) The penalty imposed takes into account extraneous factors not disclosed to the applicant in the Annexure A-8 show cause notice. In other words, previous record has been taken into account without intimation to the applicant.

7. We have carefully considered these pleadings.

8. The applicant did not take any objection regarding the vagueness of the summary of allegation when he pleaded not guilty to them. It is also seen from the record of the disciplinary proceedings which have been produced for our perusal that the applicant

had cross-examined all witnesses except PW-1, Shri Mohan ram. He did not elicit any information from them about the nature of abuses allegedly hurled by him on the Sub-Inspector. Nothing prevented him to elicit information from the prosecution witnesses about the language used in allegedly filthily abusing the Sub-Inspector which would have given him an opportunity to contend that the witnesses are contradicting themselves in this regard.

9. The learned counsel has relied on the judgement of the Allahabad High Court in Avinash Chandra Sanjar v. Divl. Supdt., Central Railway, Jhansi (1961 IL.C.J.-7) - copy kept on record - to contend that the charge should be considered vague, in the absence of the details of the abuses hurled. We have seen that judgement. In that case the misconduct alleged was "Incivility to public" in using "disgraceful language". These expressions are vague, because unless the expressions used are known no conclusion can be drawn. On the other hand, the charge "you abused SI Dalip Singh and used filthy language" are well understood in common parlance. They are not required to be elaborated by giving details and failure to give details does not vitiate the charge.

10. The witnesses have deposed that the applicant was under the influence of liquor. PW2 introduced the report of the Medical Officer as Ex.P2-A. This witness has deposed that the applicant was manhandling the Sub-Inspector, Dalip Singh, in front of the Police Post. PW3 Mahavir Singh, S.H.O. Hauz Khas, who reached the spot, also states that he found the applicant

abusing the Sub-Inspector, Dalip Singh, creating a scene under the influence of liquor. He, therefore, directed the A.S.I. Mahavir Singh, PW2, to get the applicant medically examined. PW4 is the Sub Inspector Dalip Singh. He found the applicant creating a scene at the Police Post, Malviya Nagar, under the influence of liquor and the applicant started abusing him also.

11. Thus, in so far as abusing is concerned, there is sufficient evidence.

12. It is true that Dr. Sen Gupta was not examined as a witness though a note was sent to him to make himself available for the enquiry. He could not be present as he was busy otherwise. The medical report, however, has been introduced by A.S.I. Mahavir Singh.

13. Considerable amount of argument was advanced by the learned counsel for the applicant that the medical report exonerates him. We have seen the medical report which shows that the Medical Officer did not find any sign of intoxication. He, however, found the smell of alcohol and certifies about the alcohol intake without sign of intoxication. In the circumstance the learned counsel contends that the charge is not proved.

14. We have considered this matter carefully. The charge is that the applicant abused S.I. Dalip Singh under the influence of liquor and used filthy language. The expression, 'influence of liquor' is not necessarily synonymous with intoxication. Intoxication is a state of drunkenness. The medical report

states that he was not intoxicated, i.e., not in a drunken state. 'Influence of liquor' does not amount to drunkenness but denotes a state where one does not have absolute control of oneself.

15. The learned counsel relies on the decision of the Supreme Court in State of Punjab v. Ram Singh (J.T. 1992 (4) SC 253 to contend that taking to drink by itself may not be a misconduct particularly when at home, while not on duty. We have considered this. The main charge is that the applicant filthily abused the S.I. The charge that he was under the influence of drink only accentuates the charge.

16. We are of the view that the charge that the applicant used filthy language and abused the S.I. is proved.

17. In so far as ~~xxxxxxxxxxxxxx~~ the resort to ex parte enquiry is concerned, we notice from the disciplinary proceedings that the applicant remained absent from 8.6.87 onwards on which date, the S.H.O. Hauz Khas was examined. On 15.6.87, the Enquiry Officer obtained the orders of the competent authority for proceeding ex parte.

18. We, therefore, find that the Enquiry Officer cannot be faulted for resorting to ex parte proceedings because the applicant remained wilfully absent.

19. Notice was issued to the applicant vide Annexure A-8 to show cause why he should not be dis-

missed from service. The objection raised is that this notice did not disclose the intention of the disciplinary authority to use the previous record against the applicant.

20. We have carefully considered the matter. As a matter of fact, after the amendment of Article 311 (2) by the 46th Amendment of the Constitution, it is no longer necessary to issue any show cause notice to a delinquent official about the penalty to be imposed on him. That being the case, the failure to mention the previous record in the show-cause notice, does not give any right to the applicant to challenge the order of dismissal. It is stated that the applicant had an extremely poor previous record. He has been punished on 45 different occasions for major and minor penalties. If, therefore, the extreme penalty has been imposed, it cannot be questioned.

21. For the aforesaid reasons, we find that the O.A. has no merit. Accordingly, it is dismissed. No costs.

10/6/94
(C.J. Roy)
Member(J)

10-6-94
(N.V. Krishnan)
Vice-Chairman(A)

'Sanju'