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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1751/90

New Delhi, dated the 27th October, 1994

CORAM

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Avinash Kumar Nautiyal,
r/o C/o S.P.Mangan,
307, J & K Pocket,
Dilshad Garden, New Delhi

... Applicant

(By Advocate Shri A.K. Behera)

V/s

Deputy Commissioner of Police,
10th Bn. D.A.P. Delhi

... Respondent

(By Advocate Shri Girish Kathpalia)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

The applicant, a constable in the Delhi Police, has been removed from service by the order dated 13.2.1990 of the respondent i.e. Deputy Commissioner of Police, 10 Bn., D.A.P. Delhi. Appeal preferred against this order to the Additional Commissioner of Police has been rejected and the penalty confirmed by the order dated 4.4.1990 (page 12 of the paper book). The applicant has filed this OA to quash these orders.

2. Respondents have filed a reply contesting the claim.

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3. The charge against the applicant was that:-

"It is alleged against constable Avinash Kumar, 11611/DAP that while temporarily posted in security Unit from this Bn. was deployed for PSO duty to Shri P.V. Narshimba Rao, Prime Minister of External Affairs at 9-Moti Lal Nehru Marg, New Delhi. He resumed his duty vide DD No. 5 dated 7.6.89 with one 9mm pistol and 12 live cartridges from the previous PSO relieved. He was checked by Shri Jagprevesh Kaushal, Inspector Security and found absent from duty. An entry to that effect was recorded vide DD No. 63 dated 7.6.89 'E' Block Security Lane, New Delhi. He was searched and found in - a awkward and drunken condition. He was sent for medical examination at Ram Manohar Lohia -- Hospital, New Delhi, and the opinion of the doctor was obtained vide M.L.C. No. 49065 dated 7.6.89. The doctor opined that he had consumed alcohol."

The Enquiry Officer who enquired into the matter came to the conclusion that the charge was not proved. He found from the evidence of Dr. Vimla Kumar, who was examined as defence witness, that the applicant had taken some medicines which contained Alcohol which accounted for his being taken ill, as a result of which he fell near the tap. He also relied on the medical certificate wherein it is only stated that the applicant smelt of alcohol but, in regard to other matters like pulse beating, speech, gait etc. he was found to be normal.

4. The disciplinary authority, however, disagreed with the findings of the Enquiry Officer in the following terms:-

"I have carefully gone through the D.E. file and evidence available on record. I disagree with the findings of the E.O. as the doctor of R.M.L. Hospital, Delhi who examined the defaulter

medically clearly stated that the delinquent had consumed alcohol and was also smelling of the same. The defaulter was carrying a Govt. Pistol and live cartridges when he was found drunk, in a state of unconsciousness. Pistol and cartridges were removed from his person as he was drunk. This all proves the guilt of the defaulter. He was enlisted on 1.2.1986. A constable who can become unconscious on duty by consuming alcohol while armed with a pistol, deserves no leniency. Moreso, a Const. who has hardly put four years of service. He would be a liability in the long run. Therefore, I hereby remove Const. Avinash Kumar No. 11611/DAP from service with immediate effect."

5. When the matter came up for final hearing, the learned counsel for the applicant pointed out that, in accordance with the procedure laid down by rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 a delinquent has no opportunity to say anything in his defence until his defence brief is submitted to the Disciplinary Enquiry. A delinquent police official is served with a copy of the summary of allegations and the list of witnesses and documents, He is required to submit to the Enquiry Officer a written reply within 7 days indicating whether he admits the allegations and if not, whether he wants to produce any defence evidence to refute the allegations against him. He states that in the present case, the Enqy. Officer merely served the summary of allegation and asked him orally as to whether he pleaded guilty to the charges. The applicant, therefore, orally pleaded not guilty. He did not have any opportunity to file any written statement at this stage.

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6.. The learned counsel for the applicant points out that where a major penalty is to be imposed, Rule 16(xii) (a) requires the Disciplinary Authority to give the accused Officer, free of charge, a copy of the report of the Enquiry Officer, together with brief reasons, if any, for disagreement with the findings of the Enquiry Officer. It is, thereafter, that, under Rule 17, a final order is passed, after considering the representation, if any, filed by the Accused Officer. As this opportunity has not been given to the applicant, this vitiates the further proceedings and therefore, the order passed by the disciplinary authority and the appellate authority should be quashed.

7.. The learned counsel for the respondents, however, submitted that sub rule(xii) of Rule 16 has been amended but he has not been able to produce the rule so amended.

8. We notice that sub rule(xii) of Rule 16 reads as follows:-

" If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded he shall:-

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- (a) furnish to the accused officer free of charge a copy of the report of the Eny. Officer together with brief reasons for disagreement, if any, with the finding of the E.O.
- (b) Whether the disciplinary authority is himself the E.O. a statement of his own findings, and
- (c) give him a show cause notice stating the punishment proposed to be awarded to him and calling upon him to submit within 15 days such representation as he may wish to make against the proposed action.

Sub para (c) of this rule which requires the disciplinary authority to give an accused officer a notice to show cause why the punishment imposed should not be awarded to him and calling him to file a representation in regard ^{to the proposed} ~~his appropriate~~ punishment is contrary to the provisions of Article 311(2) as amended by the 42nd amendment to the Constitution providing that the penalty may be imposed on the basis of evidence adduced during the enquiry and that it shall not be necessary to give such person any opportunity of any representation on the penalty imposed. It is for this reason^b that para c required deletion by amendment.

9. We are, therefore, satisfied that there is a violation of the statutory requirement. Even so, we have to consider whether this has caused the applicant any prejudice as observed by the Supreme Court in Managing Director ECIL in B. Karunakaran 1993(6) JT (1) - SC.

The disciplinary authority has completely failed to even refer to this defence of the applicant. There has

been no consideration at all of this plea. Though the appellate authority makes reference to it, he holds that this plea is not acceptable. No reasons have been given why the evidence of Dr. Vimla is unacceptable. Therefore, prejudice has been caused to the applicant.

10. In the circumstances, we are not going into the merits of the case. We are of the view that in the circumstances of the case, the failure to observe the prescribed procedure laid down in para (a) of sub rule (xii) of Rule 16 of the Delhi Police(Punishment and Appeal) Rules, 1980 vitiates the order of the disciplinary authority which is liable to be quashed. We do so. Consequentially the order of the Appellate Authority also stands quashed.

11. In the circumstances, the case is now remitted to the disciplinary authority to continue the proceeding, in accordance with law as mentioned above, if he so choses, from the stage reached after the Enquiry Officer's report was received by him. The

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report of the Enquiry Officer has already been given to the
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applicant. Therefore, in case the proceedings are to be
continued, further action has to be taken in accordance
with para(a) of sub rule(xii) of Rule 16 of Delhi Police
(punishment and appeal) Rules, 1980 giving him an
opportunity to show cause why the disciplinary authority
should not disagree with the findings of the Enquiry
Officer exonerating the applicant. *be* In that event,
notice giving such opportunity shall be issued within
three months from the date of receipt of this order, failing
which the disciplinary proceedings shall abate. The applicant
shall be reinstated in service within one month from
the date of receipt of this order. The manner in which the
period from the date of dismissal upto the date of
reinstatement shall be treated and the emoluments
therefor shall be determined in accordance with law.

10. O.A. is disposed of as above.

Lakshmi Swaminathan
(Lakshmi Swaminathan)

Member(J)

N.V. Krishnan
(N.V. Krishnan)

Vice Chairman(A)

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