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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2140/90

Hon'ble Shri Justice S.C.Mathur, Chairman
Hon'ble Shri P.T.Thiruvengadam, Member(A)

New Delhi, this 24th Day of February, 1995

Shri Ved Prakash
s/o Shri Kale Ram
r/o Village Ladpur
P.O.Badli
P.S.Jhhajjar
Dist. Rohtak
Haryana.

.... Applicant

(By Shri G.D.Gupta, Advocate)

Vs.

1. Commissioner of Police Delhi
Delhi Police Headquarters,
M.S.O.Building
I.P.Estate
New Delhi
2. Additional Commissioner of Police(N.R.)Delhi
Delhi Police Headquarters
M.S.O.Building
I.P.Estate
New Delhi
3. Deputy Commissioner of Police
North West Dist.
Ashok Vihar
Delhi.

.... Respondents

(By Shri Surat Singh, Advocate)

O R D E R (Oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

The applicant, Shri Ved Prakash has directed this Original Application against the punishment of dismissal from service imposed upon him in disciplinary proceedings. At the relevant time, the applicant was posted as Constable in the Delhi Police Force.

2. The applicant was proceeded against for the misconduct which is mentioned as follows in the Chargesheet,
Annexure-C:-

.....2/-

"..... Constable, Shri Ved Prakash, 928/NW for misconduct and misbehave that while on duty on 26.11.1988 vide DD No.29B P.S. Adarsh Nagar, you consumed alcohol and had been harassing a TSR Driver. You misbehaved with one Shri Mool Chand, r/o A/586, E-Block Nangloi under the influence of alcohol while on duty."

3. The above charge can be split up into three factual components - (1) the applicant consumed alcohol while on duty, (2) under the influence of alcohol he harassed a TSR Driver and (3) again, under the influence of alcohol, he misbehaved with Shri Mool Chand.

4. The applicant denied the charge.

5. In support of the charge six witnesses were examined on behalf of the administration before the Enquiry Officer. The applicant examined two witnesses. The Enquiry Officer has in his report given the substance of the statement made by each witness and has thereafter recorded the finding that the misconduct has been established.

6. The learned counsel for the applicant has submitted that the finding of misconduct is not based on any evidence. He has taken us through the findings recorded by the Enquiry Officer. The name of the TSR Driver has neither been disclosed in the chargesheet nor in the depositions of the witnesses as discussed in the report. He has also not been examined as a witness. On this basis it is submitted by the learned counsel for the applicant that there is no evidence in support of the second component of the charge.

7. The learned counsel next submits that none of the witnesses has deposed to the applicant consuming liquor in his presence. Although, the applicant was sent for medical examination and medical report was brought on record, the medical evidence is not based on any scientific examination. On this basis he submits that there is no admissible evidence to support the first component also.

8. In respect of the third component, he points out that Mool Chand was examined before the Enquiry Officer but he made positive statement to the effect that the applicant did not misbehave with him. This, according to the learned counsel, knocks off the bottom of the third component.

9. In view of the submissions of the learned counsel it becomes necessary to examine the evidence discussed by the Enquiry Officer. The first witness examined on behalf of the department is Head Constable Sewa Ram. He produced the daily diary to establish that the applicant was sent on the relevant day at the spot where he is alleged to have committed the misconduct on duty. His evidence establishes only this much that at the relevant time the applicant was on duty.

10. The next witness is Constable Phere Ram. He has claimed that he was on duty along with the applicant when the alleged misconduct is alleged to have been committed by the applicant. According to him the applicant left duty point and returned after sometime and at this point of time he was smelling of alcohol from his mouth. After sometime Sub-Inspector R.K.Sharma and a Constable came and they took him to the Police Station. He was also called to the police

station where he got DD No.29-B recorded. Later on he came to know that the Sub-Inspector got the applicant medically examined and that the applicant had quarreled with a TSR driver. In cross-examination he stated that the quarrel with the TSR driver did not take place in his presence. On material point his evidence is hearsay.

11. The third witness Shri Mool Chand, s/o Shri Chokha Ram is the one with whom the applicant is claimed to have misbehaved. In cross-examination this witness has stated that applicant had not misbehaved with him. He has further stated that at the relevant time, he was not putting on the helmet though he was riding scooter and this was objected to by the applicant. He realised his mistake and begged pardon. Meanwhile, 15/20 persons collected at the spot where Inspector R.K.Sharma also came and smelt the mouth of the applicant and took him and the applicant to the police station where his statement was recorded and thereafter he was allowed to go. He was the best witness in support of the third component of the charge but he does not support the department's case and explains the collection of crowd at the place.

12. Inspector R.K.Sharma stated that on the relevant date and at the relevant time he had gone to the spot to check the pickets. At the concerned place he found that many persons had gathered and the applicant was having discussion with Mool Chand over something. On enquiry by the witness Mool Chand disclosed to him that the applicant was misbehaving with him. He took the applicant and Mool Chand to the police station and produced them before the Station House Officer who directed him to get the applicant

medically examined. He recorded the statement of Mool Chand. Applicant was medically examined at Hindu Rao Hospital, the doctor opined that the applicant had consumed alcohol. He proved D.D. entries and other papers. The witness was not cross examined by the applicant.

13. Shri Vijay Kumar is the Station House Officer before whom Inspector R.K.Sharma produced the applicant and Mool Chand. He is not an eye witness of any of three components of the charge of misconduct. He has corroborated Inspector Sharma and stated further that Sharma told him that the applicant had misbehaved with Mool Chand under influence of liquor and this statement of Sharma was corroborated by Mool Chand. His evidence is hearsay.

14. The last witness produced on behalf of the department is Dr.S.Gurcharan Singh, CMO, Hindu Rao Hospital. His medical report is on the record of the disciplinary proceedings. He has stated that the applicant was smelling of alcohol from breath and his blood pressure was high. In cross examination it was suggested to the witness that the applicant had not taken alcohol but had taken "Pudin Hara" on account of stomach disorder to which he replied that he had mentioned about consumption of alcohol only after making enquiry from the applicant.

15. After giving the above resume of the evidence furnished by the departmental witness, the Enquiry Officer concludes - "From the examination of the PWs the allegations against the Constable Ved Prakash were proved." There is no critical examination of the evidence furnished by the PWs. He has drawn no inference from the absence of TSR Driver

from the witness box and of the denial of misbehaviour by Mool Chand. It is not clear from his finding as to how he has found components 2 and 3 proved despite the deficiencies mentioned herein. In short the finding of guilt does not have the support of reason even if there is evidence on record.

16. After recording the above finding the Enquiry Officer proceeds to give resume of the evidence furnished by the two defence witnesses examined by the applicant. He finds that their testimony does not negative the charge of misconduct levelled against the applicant. He has described the testimony of DWS as hearsay, we may assume that the rejection of the testimony of DWS is correct, but that does not necessarily leads to establishment of the charge. The charge had to be established through prosecution evidence. Therefore critical examination of prosecution evidence was more important.

17. In the concluding paragraph the Enquiry Officer observes - "In view of the above discussion, medical examination papers of the defaulter and statements of the PWs, I have come to the conclusion that the charge against Constable Ved Prakash No.928/NW is proved" The word "discussion" is most inappropriate. The discussion is only of the defence evidence. Of the prosecution evidence, there is no discussion; there is only resume. It appears that the enquiry officer was not alive to the duty cast upon him. He was not conscious of the fact that he had to record a reasoned finding on each component of the charge. The punishment may be graver where all the components of the charge are established. It may be lesser where only one or

some of the components are established. Therefore, the bald finding that the charge is proved does not pass the requirements of law.

18. The deficiency in the finding of the Enquiry Officer could be cured if the disciplinary authority or the appellate authority had made critical appraisement of the evidence on record. Unfortunately, they have also not undertaken this exercise. They have merely accepted the unreasoned finding of the Enquiry Officer. Therefore, the orders of the disciplinary authority and the appellate authority also will have to go.

19. In view of the above, the application is allowed and the order dated 9.2.1990 passed by the disciplinary authority and the order dated 26.4.1990 passed by the appellate authority are hereby quashed. It will be open to the disciplinary authority to pass fresh order in accordance with the law taking into account the observations made herein above. The applicant shall be entitled to all consequential benefits in accordance with law. There shall be no order as to costs.

P. T. Thiru

(P.T.THIRUVENGADAM)

MEMBER (A)

S. C. Mathur

(S.C.MATHUR)

CHAIRMAN

/RAO/