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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.2291/90

New Delhi, the 8th December, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri S.R. Adige, Member (A)

Shri Bhupinder Singh,
s/o Shri Kartar Singh,
Village Banipur, P.O. Bawal,
Distt. Rewari, Haryana.

... Applicant

By Advocate: Shri A.S. Grewal

Vs.

1. Additional Commissioner of Police,
(S.R.), I.T.O., New Delhi.
2. The Deputy Commissioner of Police
Rajori Garden,
West District, New Delhi.
3. Shri C.M. Dutta, S.I.
I/C PP Tilak Vihar,
Tilak Nagar, New Delhi.
4. Lt. Governor,
Delhi Administration,
Rajpur Road, Delhi.
5. Ministry of Home,
through Secretary,
New Delhi.

... Respondents

By Advocate: Smt. Arvish Ahlawat

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was enlisted in Delhi Police in January, 1984. He was posted at P.P. Tilak Vihar under Police Station Tilak Nagar. On 25.8.88 the applicant saw one Matador DEG-6950 parked on the roadside while the driver of the said vehicle who is also Bhupinder Singh was taking some edible at some distance away on a mutton shop. In getting the said vehicle removed from the roadside the

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applicant is said to have been drunk and further caused injuries to said Shri Bhupinder Singh at about 6 P.M. The said Bhupinder Singh was examined at R.M.L. Hospital and he also reported the matter to Shri Dutta, incharge P.P. Tilak Vihar who made the entry in G.D. and sent one Constable to summon the applicant. Thereafter, after holding preliminary enquiry, the competent authority directed initiation of disciplinary departmental proceedings against the applicant by the order dated 5.1.89. Shri Tek Chand was appointed as Inquiry Officer on the basis of the findings of the preliminary enquiry to hold regular disciplinary enquiry against the applicant. The summary of allegations against the applicant served upon him are that while on duty on 28.8.88 in area P.P. Tilak Vihar he consumed liquor, abused and beat Shri Bhupinder Singh with Danda which amounted to misconduct and indiscipline and misuse of official powers. The Inquiry Officer Shri Tek Chand took the statement of the witnesses Shri Bhupinder Singh, Shri Harbhajan Singh and Shri Sukhdev Singh who are the public witnesses and Shri G.C. Kapoor who held the preliminary enquiry, the statement of Shri C.M. Dutta who was incharge P.P. Tilak Vihar and the statement of Dr. J.M. Rao, RML Hospital. The Inquiry Officer Shri Tek Chand served memo. of charge on the applicant almost with the same allegations as referred to in the summary of allegations that the applicant was drunk while on duty on 28.8.88 and he also abused and beat Shri Bhupinder Singh, driver of the Matador, as such he has committed misconduct violating Rule 3(3) of the CCS Conduct Rules, 1964 punishable under section 21 of the Delhi Police Act.

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2. The applicant also examined 3 defence witnesses Shri Braham Prakash and Constable Rishi Pal and one Dr. M.A. Raja, private practitioner. Considering the statement of the witnesses, the Inquiry Officer has given his conclusion that the charge against the applicant is established and submitted the report to the disciplinary authority. Disciplinary authority issued show cause notice on 4.12.89 to the applicant and after hearing the applicant, passed the impugned order of punishment dated 25.1.90 dismissing the applicant from service. Appeal against the same has also been dismissed.

3. The applicant therefore filed this application on 13.9.90 prayed for quashing of the aforesaid order and that the applicant be reinstated in service with all consequential benefits.

4. The respondents in their reply opposed the grant of the relief and stated that the applicant while on duty consumed liquor and abused and beat one Shri Shupinder Singh at a public place and created a scene attracting a sizeable crowd. Inspector G.C. Kapoor held the preliminary enquiry and thereafter under rule 15(2) a disciplinary authority in a regular manner was directed to be initiated against the applicant. The applicant was given due opportunity and thereafter the impugned order after giving him hearing was passed. The application is devoid of merit.

5. We heard the learned counsel for applicant Shri A.S. Grewal and Mrs. Avnish Ahlawat for the respondents.

6. We have considered the contentions of the learned counsel for the applicant that preliminary enquiry report was not supplied and he has referred

to a decision reported in ATJ 1994 Part I, Vol.16 Page 190. The contention of the learned counsel for the applicant is that the preliminary enquiry report should have been supplied before initiating evidence in the case of witnesses. However, we do not find any substance because the applicant never asked for the same and nor it is mandatory under the rules. Further the disciplinary authority as well as the Inquiry Officer has not placed any reliance on the finding of the report submitted by Shri G.C. Kapoor as preliminary report. The purpose of preliminary report is only to find a prima facie case for initiation of disciplinary departmental proceedings against the delinquent. The delinquent there, too, is not given any right to cross examine the witnesses. This point has therefore no basis.

7. The learned counsel for the applicant has also placed reliance on the case of Abdul Wazir V. State of Karnataka reported in 1981(1) SLR 454 and highlighted para 5 of the report that the cross examination by the Inquiry Officer of the defence witnesses examined by the delinquent, amounts to prejudice breach of the principles of natural justice. However, in the whole of the Delhi Police (Punishment & Appeal) Rules, 1980 there is no provision of providing any defence assistant to the delinquent nor there is any presenting officer. This issue has not been raised in the present O.A. However, under Rule 16(5), the Inquiry Officer has been given right to put certain questions to the witnesses examined. In any case we do not find any prejudice caused to the applicant.

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8. The third contention of the learned counsel for the applicant is that misconduct alleged against the applicant cannot be said to be a grave and serious misconduct and punishment of dismissal has been awarded which is severe in nature and does not fall under rule 8-A and Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980. On this we have ^{given a} considerable thought and we find that the applicant was newly entrant to the Delhi Police having joined in 1984. The applicant is a young man and further we do find that Dr. who examined him did find that the applicant had taken liquor but he was not under the influence of liquor. In view of these facts we find that there are com-passionate circumstances in this case.

9. In the case Surender Nath Endow Vs. UOI reported in ATC 1994(27) 456 ^{the Hon'ble S.C. held that} where the punishment appears to be severe then it is only administrative authorities who can go into the same.

10. In view of this we find no merit in this application as regards the proving of the charge against the applicant is concerned. But as regards the punishment imposed, we remand the matter to the appellate authority to reconsider the upholding the punishment imposed by the disciplinary authority of dismissal from service. Further the appellate authority shall summon the applicant, see the records of the applicant and then pass an appropriate order of imposing penalty on the applicant so as the young man may not be marooned in his service career. The application is therefore dismissed accordingly with the above observation.

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

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