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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

O.A.NO.2311 OF 1990

New Delhi this the 23rd day of December 1994.

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. S.R. Adige, Member (A)

Shri Abhey Singh
Head Constable no.53/C
Central District Lines
P.S. Paharganj
New Delhi.

...Applicant

By Advocate: Shri J. P. Verghese

Versus

1. Delhi Administration
Through its Chief Secretary
Old Secretariat
Rajpura Road
Delhi

2. The Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi-110 002

...Respondents

By Advocate: Shri Girish Kathapalia

J U D G E M E N T

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

The Applicaant Shri Abhey Singh was issued a
summary of allegations dated 4.11.1988 (Annexure-3)

that while posted at District Lines, he was found under the influence of liquor by Station House Officer (SHO), Paharganj on 31.8.1988 at about 12.20 p.m. while SHO was checking the cleanliness of PS premises.

A departmental enquiry was instituted against him, after prosecution evidence was closed, A chargesheet was framed and issued to the applicant on 18.1.1989 stating that while posted at District Lines, SHO, Paharganj while checking the cleanliness of the PS premises found the applicant to have consumed liquor. In his findings, the Enquiry Officer (EO) held that the charge framed against the applicant stood proved. Agreeing with the findings, a show-cause notice was issued to the applicant, and upon receipt of his reply, the disciplinary authority imposed a punishment of forfeiture of 2 years' approved service and removal of his name from promotion list vide impugned order dated 16.8.1989 (Annexure-2), against which this OA has been filed. Inter-alia the applicant has also impugned the vires of rules 15 & 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 alleging that they are violative of articles 14, 16, and 31 of the Constitution.

2. The main ground taken in impugning the punishment and appellate orders is that there is no evidence to establish the guilt of the applicant, and that the punishment is harsh and disproportionate to the alleged misconduct. We note that PW1 Inspector Swatanter Kumar, SHO, Paharganj has clearly stated in his examination while checking the PS premises that he found the applicant in a drunken state in the staircase and the applicant was not moving properly on

the stairs and he was smelling alcohol. This was at about 12.10 p.m. on 31.8.1988. PW4 Dr. Robinson of JPN Hospital who examined the applicant at 5.50 p.m. had opined that there was smell of alcohol from the applicant's mouth, but his gait was normal, his speech was coherent and his pupils were of normal size with normal reactions. During the cross-examination, PW4 admitted that if a man consumes alcohol at 12.30 noon and is medically examined at 5.50 p.m., the smell of alcohol and intoxication comes down. It also depends on quantity of alcohol one takes.. Thus it is clearly reasonable to hold that the applicant was under the influence of liquor when SHO checked the PS premises at around noon on 31.8.1988, but his condition had improved at 5.50 p.m. when he was medically examined by the doctor. In his defence in the Departmental Enquiry, the applicant had taken the plea that he had been taking some ayurvedic medicine which contained alcoholic base. But this ground has not been taken in the pleadings. In any event, we as a tribunal are not competent to ~~rephrase~~ ^{interpret} the evidence. Suffice it to say that this is not a case where there is no evidence against the applicant, or that the decision of the disciplinary authority is best merely on surmises and conjectures or is perverse or arbitrary. Section 24 of the Delhi Police Act states that every police officer either on leave or under suspension shall, for all purposes of the Act, be deemed to be always on duty and Section 2 (m) defines a police officer to mean any member of the Delhi Police. Hence it is clear that the charge against the applicant has been established that he was found to have consumed liquor while on duty and the punishment of 2 years' permanent forfeiture of approved service, under the circumstances, cannot be said to be harsh. Moreover,

it is well settled that where the procedures itself suffer from no infirmity, the Tribunal is not competent to go into the question of the quantum of punishment. In so far as Sections 15 & 16 of Delhi Police (P&A) Rules being violative of the Constitution are concerned, no grounds have been made out by the applicant to warrant our coming to any such conclusion. Section 21 of the Delhi Police Act prescribes powers of punishment vested with police officers of different rank, while rules 15 & 16 lay down the purpose of making preliminary enquiry and the procedure for the conduct of Departmental Enquiry (DE). The scheme of these two rules provides that prosecution will first lead to evidence and only after enquiry officer is satisfied that prima-facie case is made out, that a formal charge will be framed against a delinquent to be called upon to reply the same, after which defence evidence will be allowed before Enquiry Officer arrives at his findings. This procedure is not at all in ^{consistent with the} ~~process under~~ provisions 14, 16 & 31 of the Constitution. Under the circumstances, this application fails and is dismissed ^{as such}.

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

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

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