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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA NO. 2462 OF 1990

New Delhi this the 25th day of December 1994.

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

Shri Rai Singh
Constable (Driver)
No. 1024/SD
South District
Houz Khas
New Delhi

....Applicant.

(Through Shri J.P. Varghese, Advocate)

Versus

1. Delhi Administration
through its Chief Secretary
Old Secretariat
Rajpur Road,
Delhi.

2. The Commissioner of Police
Police HQs
IP Estate
New Delhi

....Respondents.

(Through Sh. Rajinder Pandita,) Le
Advocate

JUDGEMENT (Oral)

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

The applicant was employed as Constable (Driver) in the Delhi Police. He was served a summary of allegations after ~~an~~ order ~~on~~ holding an enquiry dated 26.6.89 was passed by the Additional Deputy Commissioner of Police, South District, New Delhi. It is alleged that the applicant was posted at Police Station, Mehrauli and was detailed for duty on government vehicle No. DBL 277 alongwith Sub-Inspector Satish Sharma and Assistant Sub-Inspector Tej Pal Singh, on 20th May 1989. A complaint was lodged vide D.D. entry No. 35-B dated 20.5.89 by SI Satish Sharma against the applicant wherein it was recorded that the applicant refused to perform duty on the said vehicle when asked by SI Satish Sharma who had to proceed to

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village Dara from where an information was received of a quarrel between two parties and injuries were received by some persons in that affray. The aforesaid incident also showed that the applicant was smelling alcohol. Shri Banwari Lal, Inspector was appointed Enquiry Officer who examined Sub Inspector Murari Lal, Assistant Sub Inspector Tej Pal Singh, Head Constable Shiv Charan, Constable Fateh Singh, Constable Krishan Pal, Sub Inspector Satish Sharma and Inspector Ashok Hari, SHO Parliament Street. The applicant was given due opportunities to cross-examine the witnesses, but he only cross-examined SI Satish Sharma and Inspector Ashok Hari and others who deposed against him were not cross-examined. All the witnesses who deposed against the applicant stated that the applicant refused to accompany Sub Inspector Satish Sharma on the vehicle DBL-277 and that he also misbehaved with him under the influence of liquor. Having accepted the testimony of the witnesses, the enquiry officer framed charge against the applicant that " You Constable (Driver) were directed to take the vehicle No. DBL-277 to the place of incident, but you refused and even misbehaved with SI Satish Sharma. Therefore a D.D. entry No.35-B to this effect was lodged by the senior officer. The matter was brought to the notice of then SHO Mehrauli who found you smelling of alcohol and sent you for medical examination at AIIMS, New Delhi where the doctor opined as 'smell of alcohol' from your mouth."

2. The applicant has filed defence statement as well as examined four defence witnesses - Driver Rajender Parsad, Constable Randhir Singh, Constable Baljeet Singh and Constable Hans Raj. On considering the evidence and the documents, the

Enquiry Officer found the charge against the applicant proved and submitted the report to the disciplinary authority who issued show-cause notice to the applicant on 5.4.1990 which was replied by the applicant on 19th April 1990. The disciplinary authority passed the impugned order dated 14.5.90 alongwith the findings of the Enquiry Officer's report and passed a punishment of reduction of two stages in his pay scale from Rs. 1090 to 1050 in the time scale of pay for a period of two years with effect from the date of issue of that order. He will not earn increment of pay during the period of reduction and only on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. His suspension period from 20.5.89 to 11.12.89 is treated as not spent on duty. The appellate authority considered the appeal of the applicant against the aforesaid punishment order and by the order dated 24.9.90 dismissed the appeal after giving him a personal hearing.

3. Aggrieved by the aforesaid order, the applicant filed this application in November 1990 and prayed that the impugned order be quashed and also that Rule 15 and 16 of the Delhi Police (Punishment & Appeal) Rules be declared ultra vires to Section 21 of the Delhi Police Act and Articles 14, 16 and 311 of the Constitution of India. On notice, the respondents contested this application and stated that the applicant committed gross insubordination by refusing to comply with the order of a senior officer who wanted to go to a village from where a call was received about a quarrel between two parties and injuries were received by some persons in that affray. The punishment imposed on the applicant is justified. The applicant has also filed a rejoinder but it was not taken on the relevant

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file as it was not filed in time. However, we place the same on record. In the rejoinder, the applicant reiterated the stand taken in the original application.

4. We heard learned counsel for the applicant Shri J.P. Varghese at length yesterday and when the hearing resumed today, the learned counsel for the applicant fervently referred to the observations of the Hon'ble Supreme Court in the case of Anil Kumar Vs. Presiding Officer, reported in 1985 Vol. III SCC page. 378. Referring to the issue, learned counsel for the applicant argued that in fact no enquiry proceedings have been legally held against the applicant and that there is no legal evidence worth the name to come to a finding arrived at by the Enquiry Officer. Disciplinary and Appellate Authority too misconducted themselves and the testimony of the witnesses goes unchallenged. A fact is said to be proved when its existence is probable in the circumstance of the case. A person deposes a fact and it is not challenged either by cross examination or by tendering any such documents that the fact deposed to cannot be given ~~in~~ acceptance, that fact is established. Even if two ~~sons~~ of the witnesses SI Satish Sharma and ~~been~~ Inspector Ashok Hari have not/put any such questions which shows that they are not deposing the real incident which happened on 20th May 1989. Certain questions regarding duty have been asked. We do feel that the applicant is a lowly official who also discharges a function which does not ~~attribute~~ him to have better knowledge or acquaintance of the process of a shattering testimony. However, the applicant could have put up his defence to those witnesses that he was not drunk or that he did not obey the orders on account of his illness and further, instead of having taken liquor,

he has taken medicine prescribed by Dr. Rajendra Prasad earlier.

In view of this fact, it is difficult for the enquiry officer to arrive at a different finding even after considering the testimony of the defence witnesses examined by the applicant.

Even the defence witnesses state that the applicant who was on duty from 8.15 A.M. till 9 P.M. in the night was tired and unwell and so he asked SI Satish Sharma if he would like to have the services of any other driver constable. This goes to show that the applicant has refused the order by the superior officer who was posted in the same Police Station, Mehrauli and this is the charge against the applicant.

5. The learned counsel for the applicant rightly argued that the enquiry officer should have also judged the testimony of the remaining two witnesses but when all of them, one by one say the same thing, he has judged the testimony of 2 defence witnesses either inadvertently or by oversight and did not mention these defence witnesses though in the earlier part of the report he mentioned their names and referred to their deposition, would not make the finding of the enquiry officer faulty or in any way falling within the ambit of the case of Anil Kumar (Supru).
Regarding the charge of 'under the influence of liquor' the report of AIIMS doctor, that is on the enquiry file, evidence is not required to prove as it is a departmental enquiry. Inference can also be drawn from the facts and circumstance of the case. Doctor's report says that there is a 'smell of alcohol'. ASI Tej Pal Singh states that the applicant was 'under the influence of liquor' and other witnesses also deposed the same, so merely because Dr. Rajendra Prasad had prescribed certain medicine which had alcohol base, would not by itself discredit the testimony of

the medical officer who examined the applicant immediately after the occurrence on 20. th May 1988. Though we are not appreciating the evidence, but we cannot fail to observe that the applicant was on duty from 8.15 A.M. till 9 in the night when he took the medicine, and he was said to be taking his dinner in the Dabba when he was called for duty. This therefore, does not negative conclusion by the enquiry officer that the applicant was drunk and was under the influence of liquor, and holding the charge against the applicant is proved.

6. The counsel for the respondents also pointed out that the applicant as a driver has opted for 24 hours duty and that is compensated by giving him 2 days rest in a week in his favour. That is another aspect of the matter which has not been addressed by the enquiry officer.

7. We have gone through the order passed by the disciplinary and appellate authority and we do find that the applicant was heard by the Appellate Authority. He has admitted that he was drunk. Learned counsel for the applicant ~~Further~~ however argued that such oral admission would amount to the applicant himself going to hang, while he has prayed that he should be exonerated. What has been stated by the applicant before the Additional Deputy Commissioner of Police, appellate authority of the rank of ~~cannot be discredited~~ by the simile given by the learned counsel for the applicant. It may be that for getting a lenient view of the matter, sometimes hardened criminals also give vent to their inner conscience.

8. Having considered the matter in full detail, we find that the order of punishment does not call for interference. The application is therefore dismissed, leaving the parties to bear their own costs.

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

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