

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 1228/91 /19

Decided on: 24.1.96

Balraj Singh

..... APPLICANT(S)

(By Shri Shankar Raju

Advocate)

VERSUS

Commissioner of Police, Delhi

..... RESPONDENTS

(By Shri Raj Singh

Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXXXXX~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

(Dr. A. VEDAVALLI)
Member (J)

(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1228 of 1991

New Delhi, dated the 24th January, 1996.

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Balraj Singh,
Constable No. 530/NE
S/o Shri Hazari Lal,
R/o House No. PB-72,
New Seelampur,
Delhi-110053.

..... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. The Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi.
2. The Addl. Commissioner of Police,
New Delhi Range, Police Hqrs.,
New Delhi.
3. The Addl. Dy. Commissioner of Police,
North-East District,
Shahdara, Delhi.

..... RESPONDENTS

(By Advocate: Shri Raj Singh)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri Balraj Singh, Constable, Delhi Police has impugned his dismissal order dated 31.10.90 (Annexure A-5) and the appellate authority's order dated 5.4.91 (Ann. A-7) reinstating the applicant and imposing the lesser punishment of withholding five years increment with cumulative effect.

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2. The applicant was proceeded against departmentally on the allegations that on the night of 21/22.8.89 at about 10-11 p.m. while posted at P.S. Seelampur and under the influence of liquor he went to the house of one Shri Bhagirath Arora and brought Smt. Rupa w/o Bhagirath Arora and one Ishtaq (who was also present there) to the P.S. Seelampur on the pretext that Smt. Rupa was running a brothel. He threatened them and demanded Rs.5000/- from them, saying that if they did not fulfil the demand within 20 minutes they would be put behind bars. After some time Asgar, elder brother of Ishtaq came to the police station with Rs.1000/-, and offered this amount to the applicant, who however did not accept it and asked Smt. Rupa to fulfil his sexual desire in case they were unable to arrange Rs.5000/-. Smt. Rupa refused to fulfil his desire upon which he beat them. On hearing the noise some other police officers came there and brought them to the reporting room. At about 2.30 a.m. ACP, Seelampur came there and Smt. Rupa and Ishtaq were produced before them. They narrated the facts to him. The applicant was sent for medical examination at A.T.B. Hospital as per orders of ACP, Seelampur vide MLC No. C-53957 dated 22.8.89 and the doctor gave a positive test of smell of alcohol but in a normal sense.

3. The applicant was suspended on 31.8.89 pending enquiry into his conduct. The E.O. in his findings reported that after careful consideration of all aspects of the case including summary of allegations, prosecution witnesses, defaulter's statement, charge and defence evidence, and having applied his judicial mind, he had concluded that the charge of carelessness and misconduct in the discharge of official duties was proved against the applicant.

4. The applicant was served a copy of the D.E's findings vide order dated 11.9.90 and submitted his reply to the same on 1.10.90.

The disciplinary authority heard the applicant in the orderly room on 19.10.90. In his impugned order dated 31.10.90 he noted that the applicant had no satisfactory answers as to why he brought Smt. Rupa to the P.S. during the night without permission and kept her in his illegal custody. He also failed to inform his senior officers even after he brought the complainants to the police station. He noted further that he had carefully gone through the various materials on record and the statement of ACP, Seelampur was itself sufficient to prove the applicant's guilt. Accordingly he dismissed the applicant vide his order dated 31.10.90 directing that the suspension period be treated as not spent on duty.

5. Thereupon the applicant filed his appeal petition which was disposed of by the appellate ^{authority} ~~order~~ vide his impugned order dated 5.4.91. In the said order the appellate authority noted that he had gone through the appeal and other relevant records. The appellant was also heard in person on 22.3.91, during which he repeated the pleas contained in his appeal and also pointed out some procedural irregularities committed by the E.O. in conducting the D.E. against him. The appellate authority stated that the applicant had admitted during personal hearing that he consumed alcohol, but never misbehaved with Smt. Rupa and others in the Police Station premises, nor demanded any money from them. The applicant also pleaded for mercy. The appellate authority noted that the E.O. had not elaborated the evidence on record to prove the charge against the applicant. He further noted that the witnesses in the cross-examination of the D.E. in their statement had not supported the allegations against the applicant. The medical officer who was an important witness was also not examined in the D.E. It was also noted that certain procedural irregularities had been committed as per laid down procedure in Rule 16 (3) Delhi Police (P&A) Rules in that the statement of witnesses recorded during the P.E. had not been attested by any police officer.

The appellate authority therefore held that while the allegation of consuming alcohol while on duty and bringing Smt. Rupa to P.S. without authority and genuine reason, had been clearly established, the applicant's gross misconduct with Smt. Rupa in the police station premises, and also the charge that he had beaten her and Ishtaq in the P.S. premises and demanded money from them was not fully established. Under the circumstances taking a lenient view he converted the punishment of dismissal into one of withholding of five annual increments with cumulative effect.

6. We have heard Shri Shankar Raju for the applicant and Shri Raj Singh for the respondents.

7. Various grounds have been taken in the O.A. namely that no prior approval was taken of the Addl. C.P. before ordering of D.E. against the applicant as required under Rule 15(2) Delhi Police (P&A) Rules; retrospective placement of the applicant under suspension by order dated 25.8.90 w.e.f. 22.8.90; non-payment of back wages for the period of unemployment, consequent to the dismissal order being set aside and a lesser penalty being imposed; the non-sustainability of the first

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part of the charge, when even according to the appellate authority the E.O. had not elaborated upon the evidence on record; non-substantiation of the charge of consuming alcohol on account of non-examination of material witnesses; the absence of any evidence to establish the charge against the applicant; the non-issuance of a notice under Rule 16(ii) (c) Delhi Police (Punishment & Appeal) Rules in respect of treating the suspension period as not spent on duty; the absence of a speaking order by the disciplinary authority; the failure of the E.O. to discuss the cross-examination of the PWs in his finding; incomplete and infirm finding of the EO; and the excessive quantum of punishment.

8 . Before adverting to these grounds, it is necessary to go back to the appellate authority's impugned order dated 5.4.91 wherein he has recorded

"The applicant was also heard in person by me on 22.3.91. He repeated the pleas which he has contended in his appeal and also pointed out towards some procedural irregularities committed by the EO in conducting the DE against him. He admitted in his personal hearing before me that though he had consumed alcohol but he never misbehaved with Smt. Roopa and others in the premises of the Police Station and demanded money from them. He requested for mercy."

9. In other words the appellate authority has recorded in his impugned appellate order dated 5.4.91 that the applicant during personal hearing before him admitted having consumed alcohol while on duty and requested for mercy. This assertion in the

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body of the appellate order has not been denied by the applicant either in the OA itself, nor in any rejoinder filed by him; nor is it his case that it was extracted from him under coercion. It is significant that the appellate authority did not record that the applicant had admitted only to have consumed medicine containing alcohol that evening while is what the applicant wants us to believe.

10. In the light of the fact that the appellate authority has recorded in the impugned appellate order that the applicant had admitted before him that he had consumed alcohol that evening and requested for mercy which assertion has not been denied by the applicant at any stage in this case, it is clear that the applicant had consumed alcohol while on duty on the night of the incident, when he had proceeded to the house of Bhagirath Arora. Furthermore, in the particular context of this case, when the applicant has requested or prayed for mercy it is not ^{an} protestation of his innocence, but we can only conclude that it is rather a tacit, if not *overt* admission of his guilt in respect of those portions of the charges which he does not specifically deny. It is in this background that the appellate authority had held that the ends of justice would be met if the punishment of dismissal was reduced to that of 5 years' forfeiture of increment, and that being the position, it cannot be said that this is a case of 'no evidence' or that the impugned punishment is arbitrary, illegal, malafide or perverse, or the infirmities detected in the conduct of the DE are by themselves such as to warrant our judicial

intervention.

11. In the result, we are not inclined to interfere in this matter. The OA fails and is dismissed. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige

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

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