

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

New Delhi, this the 7th day of July, 1995.

DA No.1319 of 1991

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN(J)

HON'BLE MR B.K.SINGH, MEMBER(A)

Shri Bhisham Kumar,
R/O B/194, Hardeopuri,
near Saufoota Road,
Gali No.7, Delhi-93.

.. .. Applicant

(through Mr Ex.Joseph with Ms Oomen, Advocates)

vs.

The Administrator,
Union Territory of Delhi
through the Chief Secretary,
Delhi Administration,
Old Secretariat,
5, Shamnath Marg,
New Delhi.

2. The Commissioner of Police,
Union Territory of Delhi,
I.P.Estate,
New Delhi-2.

3. The Addl. Commissioner of Police,
Armed Police Delhi,
Delhi Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.

4. The Dy. Commissioner of Police,
1st Bn., Delhi Armed Police,
Kingsway Camp, Delhi

.. .. Respondents.

(through Mr B.K.Gupta, Advocate).
(proxy for Mr B. S. Gupta, Adv.)

O R D E R (ORAL)

PER A.V.HARIDASAN, V.C.(JUDL.)

The applicant Bhisham Kumar, Constable No.6189
(DAP) and his fellow Constable Sanjeev Kumar were on
19th February, 1990, served with the following
summary of allegations:

" it is alleged that on 12.1.1990 at about

11.30 p.m., on returning back to his tent from the recreation room after seeing Chitrahara, News Bulletin and the Serial H.C. Jagpal Singh No. 104/DAP 'F' Coy C.P. Reserve Vijay Ghat found his bed wet and in a disorderly state. His clothes were sullied and distained. On enquiries it was learnt that constables Anil Kumar No. 352/DAP and Balraj Singh No. 6261/DAP, the residents of the same tent, that all that was done by Consts. Sanjeev Kumar No. 508/DAP and Bhisam Kumar No. 6189/DAP under the influence of liquor. It is further alleged that they discharged urine on his bed. Constables Sanjeev Kumar and Bhisam Kumar, when questioned by H.C. Jagpal Singh, abused and insulted him.

Insp. Pooral Mal, on being informed by H.C. Jagpal Singh, directed S.I. Mishri Lal and H.C. Hari Chand No. 57/DAP to look into the matter and got both the constables medically examined. Vide Medical reports officer of Civil Hospital Rajpur Road, confirmed that both the constables had consumed liquor but were not under its influence.

Therefore in the light of the above facts they both are liable to be dealt with departmentally under Section 21 of the Delhi Police Act, 1978."

2. Since the applicant as well as his colleague denied the allegations against them, an inquiry was held. Six witnesses were examined in support of the Charge and the report of the Medical Officer was perused. The Inquiry Officer, thereafter framed the following charge:

" On 12.1.90 you Constables Sanjeev Kumar No. 508/DAP and Bhisam Kumar No. 6189/DAP were posted at Vijay Ghat in C.P.'s Reserve of 1st Bn. DAP. In the evening when H.C. Jag Pal Singh No. 104/DAP had gone to see TV in the recreation room tent, it is alleged that your Constable

dishevelled and blemished his bedding and clothes while in revellous mood under the influence of liquor.

Inspr. Poorn Mal, I/C C.P. Reserve, on being informed by H.C. Jag Pal Singh No. 104/DAP, directed S.I. Mishri Lal and H.C. Hari Chand No. 57/DAP to look into the matter and get both of your medical examined. Vide Medical reports No. 694 and 695 dated 13.1.90 you both the constables were found to have consumed alcohol but not under the influence of liquor.

The above act on the part of you Ct. Sanjeev Kumar No. 508/DAP and Ct. Bhisam Kumar No. 6189/DAP amounts to gross misconduct, indiscipline and unbecoming of a police officer.

Therefore, I, Insp. Rohtash Singh, charge you both the constables under Section 21 of the Delhi Police Act, 1978. "

3. The charge, having been denied by them, they were asked to tender their evidence and four witnesses were examined in defence. On a consideration of the evidence, the Inquiry Officer held the charge partly proved. Accepting the Inquiry Report and concurring with the finding of the Inquiry Officer, the Deputy Commissioner of Police, by his order dated 5th May, 1990, dismissed the applicant from service. Aggrieved by the order, the applicant preferred an appeal to the Addl. Commissioner of Police, who, by his order dated 17th October, 1990, refused to interfere. The revision filed by the applicant to the Commissioner of Police also met with the same fate vide order dated 4th February, 1991. It is under these circumstances, aggrieved by the dismissal from service that the applicant has filed this application. The applicant has challenged the validity of the impugned orders on various grounds, mainly, on the ground that the finding that he was guilty is based on no evidence at all and therefore, it is perverse

4. The respondents resisted the application. They have filed the reply-affidavit.

5. We have meticulously examined the pleadings in this case. We have also heard the arguments advanced by Mr E.X. Joseph with Ms Domen for the applicant and Mr S.K. Gupta for Mr B.S. Gupta for the respondents. The learned counsel for the applicant pointed out that the gravamen of the allegation, contained in the summary of allegations was that the applicant and Sanjeev Kumar on the night of 12th January, 1990, damaged the bed of Head Constable Jagpal Singh, made it wet by passing urine therein under the influence of liquor.

6. Proceedings against the applicant and Sanjeev Kumar were initiated on the complaint of Head Constable Jagpal Singh, who had not witnessed any overt act but was informed by prosecution witnesses (PWs 1 and 2) of it. The Doctor, who, allegedly examined the applicant and is said to have given a Certificate, in which it was stated that the applicant was found to have consumed Alcohol but was not under its influence was not examined in the inquiry but ^{the Certificate} was marked in evidence. The eye-witnesses to the occurrence, namely, PWs 1 and 2, did not support the prosecution. They have not implicated the applicant. Therefore, there was no evidence at all either to establish that the applicant had deshabilled and blemished the bedding and clothes of Jagpal Singh while in revelleous mood under the influence of liquor or that he had consumed alcohol. There was no allegation either in the summary of allegations or in the Charge-sheet that at the point of time when the applicant was said to have consumed Alcohol he was on duty and that his conduct in consuming liquor, while ~~not~~ on duty amounted to misconduct. Referring to the circumstances of the case, the learned counsel for the

applicant argued that there is no charge of any misconduct according to the service rules, and, therefore, the finding that the applicant is guilty, is perverse. He has further argued that since none of the witnesses has deposed that the applicant had consumed liquor and as the Medical Officer, who had issued a Certificate has not been examined, there is not even an iota of evidence to establish that the applicant had consumed liquor at all.

In a proceeding of this nature, the Tribunal, normally is not required to re-appraise the evidence but when ^{assailed on the ground that it is} the impugned order is perverse and not supported by any evidence at all, we are of the considered view that the Tribunal will be escaping its responsibility if it does not look into the evidence to find out whether the finding is supported by any evidence at all. Therefore, we have scanned through the evidence to find out whether there is any evidence at all to establish that the applicant had consumed Alcohol ^{and has committed the misconduct}. The only witness, namely, Shri Chand (PW-5), who has stated that smell of ^{alcohol} ~~liquor~~ was emanating from the mouth of two Constables, also did not state that the applicant had consumed alcohol. Smell of Alcohol may be on account of consuming Alcohol or by consuming some medicinal preparation, which contained Alcohol. The case of applicant, adduced ^{the} ~~the~~ defence evidence is that for some ailment, the applicant was given "Surra" by his doctor, therefore, the testimony of the above-said witness cannot also be taken to be any proof of the fact that the applicant had consumed liquor.

Now, assuming for a moment, that there was evidence to establish that the applicant had consumed liquor, the case of the prosecution itself is that he was

not under the influence of liquor. Nobody has stated what was the time at which the applicant had consumed liquor if at all he had. There is not even a whisper either in the summary of allegations or in the charge-sheet that the applicant was on active duty at the point of time when he had allegedly consumed liquor. Therefore, the argument of the learned counsel for the applicant that there is no basis for the charge and there is no basis for the finding that he is guilty, has to be accepted. No witness has stated that the applicant had committed any of the overt act under the influence of liquor or that the applicant, while on duty, had consumed alcohol. It is unfortunate that even the appellate authority and the revisional authority did not go into this aspect of the case. Therefore, we are of the considered view that the impugned orders of the Disciplinary Authority, Appellate Authority as also the Revisional Authority are liable to be struck down, as the finding that the applicant was guilty is perverse.

7. In the light of the facts and circumstances discussed above, we are of the considered view that the applicant is bound to succeed. The impugned orders are, therefore, quashed and set aside. The respondents are directed to re-instate the applicant in service forthwith, at any rate not later than one month from the communication of this order. The period for which the applicant was kept out of service including the period of suspension, should be treated as on duty for all purposes excepting for the purpose of arrears of pay and allowances.

8. There will be no order as to costs.

(B. K. Singh)
Member(A)

(A. V. Haridasan)
Vice Chairman(J)