IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2249/1991 198
~~T.A. No.~~

DATE OF DECISION 26.9.1995

Shri Pratap Singh — Applicant (s)

Mrs. Avnish Ahlawat — Advocate for the Applicant (s)

Versus

Delhi Administration & Ors. — Respondent (s)

Shri Ajesh Luthra for Ms. Jyotsna Kaushik — Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. A.V.Haridasan, Vice Chairman (J)

The Hon'ble Mr. R.K. Ahooja, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes

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

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2249 of 1991

New Delhi this the 26th day of September, 1995.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

Ex Constable Pratap Singh
No.782/C, Delhi Police
through Mrs. Meera Chhiber,
Advocate, 243, Lawyers Chamber,
Delhi High Court, Delhi. ... Applicant

(By Mrs. Avnish Ahlawat, Advocate)

Versus

1. Delhi Administration
through Commissioner of
Police, Delhi Police,
Police Hqrs., MSO Building,
I.P. Estate, New Delhi-2.

2. Shri A. K. Singh,
Additional Commissioner of
Police (Operations),
Delhi Police, I.P.Estate,
New Delhi-2.

2. Shri P. L. Meena,
Dy. Commissioner of Police
(Provisions & Lines),
Delhi Police, I.P.Estate,
Police Headquarters,
New Delhi-2. ... Respondents

(By Shri Ajesh Luthra for Ms. Jyotsna Kaushik,
Advocate)

O R D E R (ORAL)

Shri A. V. Haridasan, VC (J) :-

The penalty of removal from service imposed upon the applicant, a Constable in the Delhi Police, by order dated 3.11.1990 of the 3rd respondent and the appellate order dated 3.5.1991 of the 2nd respondent rejecting his appeal are under challenge in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant while posted for duty at Quarterguard on 14.10.1989 was at about 11.2 hours

in the night was taken by S.I. Shiv Kumar to the medical officer for examination on the allegation that he was found creating nuisance at the duty spot under the influence of liquor. The medical officer issued a certificate in which on the basis of the clinical examination the doctor opined that the applicant had consumed alcohol and was under its effect. On that basis, he was served with a summary of allegations alleging that in the night between 14/15.10.1989 he was found making nuisance under the influence of liquor at 10.45 P.M. when checked by S.I. Shiv Kumar, and that on medical examination in the Civil Hospital, Rajpur Road, Delhi by Dr. G. S. Soin, M.S. Surgeon, he was found to have consumed alcohol and was under its effect. An inquiry was held in which as many as six witnesses including the doctor were examined. On the basis of the ~~findings~~ evidence recorded in the inquiry the inquiry officer framed a charge against the applicant that he was creating nuisance at the duty spot in the Quarterguard at about 10.45 p.m. on 14.10.1989. In reply to the charge, the applicant denied the charge and stated that he had only consumed 'Sura' for a stomachache under medical advice. No defence evidence was adduced. The inquiry officer submitted his report with a finding that the applicant was guilty. The disciplinary authority accepting the finding of the inquiry officer held the applicant guilty and imposed on him the penalty of removal from service. The appeal filed by the applicant to the Additional Commissioner of Police was not successful. It is in this background that this application came to be filed.

3. It is alleged by the applicant that the finding of the inquiry officer as accepted by the disciplinary authority is perverse for it is not supported by any evidence; that the disciplinary authority has gone wrong in not conforming to the provisions contained in Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980; and that the appellate authority has not exercised his jurisdiction and has not given a speaking order as required under Rule 25 of the Delhi Police (Punishment and Appeal) Rules, and that for these reasons the impugned orders are unsustainable in law.

4. The respondents have filed a detailed reply statement.

5. We have perused the entire materials available on record and also heard Mrs. Avnish Ahlawat for the applicant and Shri Ajesh Mathur for Ms. Jyotsna Kaushik on behalf of the respondents.

6. The learned counsel for the applicant pressed only two points. The first point argued by the learned counsel was that the finding that the applicant was guilty is perverse as it is not supported by any evidence at all. Having perused the evidence recorded at the inquiry, we find that as many as six witnesses were examined and it cannot be said that this is a case of no evidence. The Sub Inspector found the applicant creating nuisance at the duty spot and took him to the medical officer who on examination issued a certificate in which the doctor opined that the applicant had consumed alcohol and was under its influence. P.W.1 H.C. Daya Nand has stated that the applicant

was creating nuisance under the influence of liquor in the Quarter Room. P.W.4 H.C. Roshan Singh has given evidence that he found Constable Pratap Singh making nuisance under the influence of liquor on Secy which S.I. Shiv Kumar took him to the hospital for examination. This witness was not cross examined. P.W.5 Dr. G. S. Soin has testified that on 14.10.1989 he examined Constable Pratap Singh who was under the influence of liquor. Against this evidence the applicant did not tender any defence evidence at all. In his written statement the applicant had stated that on 14.10.1989 he was feeling unwell and had taken medacine after which he did not know as to what had happened. The applicant having admitted that he had taken something and after that he did not know what had happened has not cared to adduce any evidence in defence to show that it was some medicine which he consumed under medical instructions. The finding of the inquiry officer and the disciplinary authority based on this evidence cannot be said to be perverse. We are satisfied that the finding is warranted by the evidence on record. The learned counsel for the applicant placed reliance on a ruling of the Punjab & Haryana High Court reported 1983 (2) SLR 159 (Rattan Lal Ex-Constable vs. The State of Haryana & Ors.) in which the finding of guilt against the police official on a charge of drunkenness was held to be not supported by evidence because in the medical certificate the doctor had only stated that the official was smelling alcohol but was not under due effect of alcohol. This decision does not help the applicant in this case because in the medical report the doctor has opined that the speach of the applicant was incoherent and his gait was unsteady. The facts in the case before

the High Court and the facts on hand are entirely different. The learned counsel also placed reliance on a ruling of the Supreme Court in 1971 (3) SCC 930 (Bachubhai Hassanalli Karyani vs. State of Maharashtra). This was a case relating to a criminal case wherein it was held that the conclusive proof of drunkenness can be ~~held~~ head only on an examination of the alcohol content in the blood and urine. The degree of proof required in a criminal case and those required in a departmental proceedings are entirely different. In the earlier, the proof should be beyond any shadow of reasonable doubt while in the latter what is required is preponderance of probabilities. Thus the decision of the Supreme Court is also of no help to the applicant.

7. Learned counsel for the applicant also invited our attention to a circular issued by the Deputy Commissioner of Police in which attention has been invited to a judgment by a Magistrate in Delhi in a case under Section 117 of the Motor Vehicle Act that the medical report of an accused must give a definite opinion ~~certificate~~ showing alcoholic smell, unsteady gait, dilation of pupils and incoherent speech. Attention has also been drawn to the ruling of the Bombay High Court in K. J. Gavit vs. State of Maharashtra, 1978 Cr. L.J. 829, in which it was held that the external symptoms are not conclusive proof of drunkenness; the doctor's certificate should be based on blood or urine test, showing alcoholic smell, unsteady gait, dilation of pupils and incoherent speech. Relying on this circular the learned counsel argued that the respondents themselves having noted the fact that drunkenness can be brought home

only on examination of blood and urine, it is idle to contend that in a departmental proceeding drunkenness can be established even without doing that. This argument has only to be noted because the circular does not state that in the case of departmental proceedings where there is an allegation of drunkenness it is necessary to have the blood and urine of the official examined. What is necessary in a departmental proceeding is to have the evidence on which a reasonable conclusion of guilt can be arrived at. On a careful scrutiny of the inquiry report, the evidence and the facts and circumstances of the case, we are left with no doubt that the finding that the applicant was guilty is supported by ~~conclusive~~ cogent evidence and, therefore, no judicial interference is called for in this case.

8. Learned counsel for the applicant next argued that the disciplinary authority was wrong in taking note of an earlier incident where the penalty of censure was awarded to the applicant in arriving at the penalty that ~~is~~ could be awarded to the applicant and that this having been done without an indication either in the summary of allegation or the charge framed that the above fact would be taken into consideration, it amounts to violation of the provisions contained in Rule 16 ~~(ii)~~ (xi) of the Delhi Police (Punishment & Appeal) Rules. We have perused the impugned order. Though in the body of the order while narrating the sequence of facts and circumstances, the disciplinary authority has also mentioned that on an earlier occasion the applicant had been awarded the penalty of censure for a similar misconduct, it does not

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appear that the disciplinary authority has decided to impose the severe penalty of removal placing reliance on that. While deciding the quantum of penalty this aspect was not discussed by the disciplinary authority. Therefore, there is no reason to ~~indicate~~ conclude that this had weighed with the disciplinary authority in awarding the applicant the penalty of removal from service.

9. Learned counsel for the applicant next argued that the appellate order is unsustainable as it is cryptic and non-speaking. A perusal of the appellate order shows that there is considerable force in this argument. While the appellate authority has stated that he found no reason to interfere with the order of penalty, he has not discussed the various grounds raised by the applicant in his appeal memorandum. But the appellate order being cryptic does not make the initial order of penalty either unsustainable or unreasonable. After the appellate authority's order the matter is being considered by the Tribunal and, therefore, the fact that the appellate order is cryptic does not help the applicant.

10. In the conspectus of facts and circumstances, as discussed above, finding no merit in this application, we dismiss the same. There shall be no order as to costs.

(R. K. Ahooja)
Member (A)

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

/as/