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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 920/1991

New Delhi this the 4th Day of August, 1995

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

Hon'ble Mr. K. Muthukumar, Member (A)

Shri Raj Singh,
Son of Shri Manphool Singh,
Resident of Village Barthal,

P.O. Bijwasan,
PS Najafgarh,
New Delhi.

(By Advocate: Sh. C.P. Pandey vs.

1. Delhi Administration through
Secretary Home Department,
Delhi.
2. Commissioner of Police,
Police Headquarters,
New Delhi.
3. Deputy Commissioner of Police, 1st
Battalion,
Delhi Armed Police,
Delhi.
4. Additional Commissioner of Police,
Armed Police,
Delhi.

(By Advocate: Shri S. K. Gupta, Proxy
for B. S. Gupta)

O R D E R

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

The applicant, Raj Singh, Ex-constable No. 6202/DAP was posted in 1st Battalion, D.A.P. (C.P. Reserve), Mandir Marg on 24.8.1989. He was to report for duty as Kot Sentry from 6 PM to 9 PM on that date, but at about 5.20 PM on 24.8.1989 he was taken into police custody by Sub-inspector, Sunil Sharma and taken him to the Police Station alongwith one Rajiv Ahuja with whom he was alleged to have been involved in a quarrel. Both, the applicant and Rajiv Ahuja was proceeded under the provisions of Sections 107/151 of Code of Criminal Procedure. The applicant was also medically

examined by the doctor who certified that he was neither under the influence of alcohol nor had consumed alcohol. He was under arrest and was in police custody until 12.30 PM on 25.8.1989. The proceedings initiated against the applicant and Rajiv Ahuja under Sections 107/151 of the Code of Criminal Procedure was dropped. However, he was served with the summary of allegations wherein it was alleged that he while posted in 1st Battalion, D.A.P. (C.P. Reserve), Mandir Marg, failed to report for duty on 24.8.1989 and also failed to inform why he did not report for duty, that on 25.8.1989 at about 12.30 PM an information was received from duty police officer, Police Station, R.K. Puram that the applicant had been arrested under Sections 107/15 Cr.P.C by Police Station, R.K. Puram for quarrelling with Rajiv Ahuja, son of S.S. Ahuja that, Rajiv Ahuja and the applicant were sent for medical examination as there were minor injuries on their bodies, that the applicant being an ex-student of Atmaram Sanatam Dharam (ARSD) College, used to make frequent visits to the college and interfere with the internal matters of college under severe threats that the Principal of the ARSD college had made a written complaint against him regarding his rude behaviour with the college staff and that the above conduct of the applicant amounted to mis-behaviour for which disciplinary proceedings were to be initiated.

2. An Inquiry Officer was appointed and the Inquiry Officer examined six witnesses in support of the allegations of mis-conduct against the applicant and framed the charges against the

applicant in tune with the summary of allegations. Thereafter two witnesses in defence were also examined. On a detailed consideration of the evidences on record, the Inquiry Officer submitted a report finding that on the basis of the evidence on record, the charge against the applicant was not at all established. The third respondent, the Deputy Commissioner of Police, 1st Battalion, Delhi after a perusal of the report and the file disagreeing with the findings of the Inquiry Officer issued a show cause notice to the applicant to explain as to why the proposed punishment of dismissal from service should not be imposed upon him. In response to this show cause notice the applicant submitted a reply 'Annexure 'C' wherein he stated that there was absolutely nil evidence to establish his guilt as has been observed by the Inquiry Officer that his being absent from duty was only because he was arrested and detained in police custody and not on any action of any lack of duty and that as the charges against him have not been established in the Inquiry, he may be exonerated. The third respondent by the impugned order dated 25.7.1990 Annexure 'D' imposed on the applicant is punishment of dismissal from service with immediate effect. The applicant filed an appeal to the Additional Commissioner of Police, Armed Police, Delhi, ^{which} was rejected by him vide his order dated 11.1.1991, Annexure 'E'. Aggrieved by the order of punishment of dismissal from service, the applicant has filed this application impuning the order

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of the third respondent and praying for a direction to the respondents to reinstate the applicant with all consequential benefits including back wages, quashing the impugned order dated 25.7.1990. The applicant has alleged in the application that he was unnecessarily arrested by the Sub-inspector Sunil Sharma while he was passing through the road near Dhaula Kuan Bus Stand at about 5.20 PM to get a bus to go to his duty spot while some youngsters and one Rajiv Ahuja were engaged in scuffle and that his failure to report for duty or to inform his office about his inability to report for duty being on account of his detention in the Police Station, there was nothing in which he could have been proceeded against in the departmental proceedings. It is further alleged that while Rajiv Ahuja, the first witness examined in support to the charge with whom he was allegedly seen to have been involved in a scuffle by the Sub-inspector, Sunil Sharma himself has stated that the applicant did not do anything and as one of the witnesses examined in support of the charge has implicated the applicant with any misconduct with which he was charged the action on the part of the disciplinary findings of the Inquiry Officer, is totally perverse and unsustainable.

3. The respondents have filed a reply in which they seek to justify the impugned order ground that there was sufficient reasons for the disciplinary authority to disagree with the findings of the Inquiry Officer.

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4. We have heard Shri C.P. Pandey, learned counsel for the applicant and Shri S.K. Gupta, proxy counsel for Shri B.S. Gupta, the learned counsel for the respondents. We have perused the pleadings and other materials on record and have also seen the file relating to the disciplinary proceedings.

5. The applicant is assailing the final order passed in disciplinary proceedings against him by the disciplinary authority. There is no case for the applicant that the Inquiry was held ^{not} in conformity with the rules. Once it is established or is not disputed that the Inquiry is being held in conformity with the rules in that regard, then generally the Courts and Tribunals will not interfere with the finding or the penalty imposed unless it is established that the finding is totally perverse or that the punishing authority has disabled himself to act in a fair manner. The case of the applicant is that it is a case where there is no evidence at all which would enable a reasonable person to come to the conclusion that he was guilty of the misconduct alleged and that for that reason the finding of the disciplinary authority that he is guilty is absolutely perverse and devoid of application of mind. His further case is that the appellate authority has not examined the facts and circumstances of the case in the light of the contention raised by him in the appeal memorandum and therefore the appellate order is also bad for non application of mind.

6. The charge(s) framed against the applicant by the Inquiry Officer after examination of the witnesses in support of the summary of allegations against the applicant reads as follows:

1. "On 24.8.89, while posted in C.P. Reserve Mandir Marg, 1st Gn. DAP, you constable Raj Singh No. 6202/DAP failed to turn up for Kot duty from 6 PM to 9 PM and thus was marked absent vide DD No. 15.
2. On the night between 24.8.89 and 25.8.89, at 2.40 AM vide DD No. 20, duty officer Control Room Ist Bn, DAP, on receipt of an information from duty officer Police Station R.K. Puram, informed C.P. Reserve (Mandir Marg) about your arrest U/S 107/151 Cr.P.C. by P.S. R.K. Puram for pick ing up a quarrel with one Shri Rajiv Ahuja S/o Shri S.S. Ahuja R/o H.No. 3 North West Moti Bagh New Delhi. You also did not bother about the gentlemen advise of SHO R.K. Puram to desist from quarelling..
3. You Const. Raj Singh, being the Ex student of ARSD College Dhaula Kuan, used to pay frequent visits there and threaten the college staff and nearby shopkeepers etc.
4. Since the above act on the part of you constable Raj Singh amounts to gross - misconduct, carelessness and deriliction in the discharge of your official duties, I Insp. Rohtash Singh R.I. Ist Bn. DAP charge you Const. U/s 21 sof the D.P. Act. 1978"

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After these two witnesses were examined on the side of the applicant in defence. The main allegations against the applicant are that on 24.8.1989 at about 5.20 PM he was found quarelling with one Rajiv Ahuja and was arrested by the PW 5 SI Sunil Sharma that he

did not pay heed to friendly advise of the SHO PS R.K. Puram to desist from quarelling that he was an ex-student of ARSD College, Daula Kuan he used to frequently visit the College and threatened the College staff and nearby shopkeepers and that he did not report for duty on 24.8.1989 and failed to furnish information as to why he was not present for duty. Regarding the alleged quarrel between the applicant and Rajiv Ahuja who was examined as PW 1, there was no evidence at all : apart from the testimony of PW 5 who arrested him. PW 1 Rajiv Ahuja has in his testimony stated that it was a group of students who attacked him and the applicant did not do anything against him although it was stated that the applicant was among the people who gathered there. The PW 1 has not implicated the applicant with picking up quarrel with him. PW 2, 3, 4 and 6 are not eye witnesses regarding the occurrence of the alleged quarrel, they did not adduce any evidence about it. PW 5, Sub-inspector Sunil Sharma who arrested the applicant kept him in custody for more than 24 hours and produced him before the Magistrate for proceedings under Section 107/151 of Code of Criminal Procedure alone has given evidence to the effect that the applicant was found quarelling with Rajiv Ahuja. The Inquiry Officer has on very reasonable grounds rejected the testimony of PW 5 on the ground that it looked highly suspicious and ~~xxxxxx~~ was unsafe to place any reliance on the testimony of PW 5 without corroboration from some independent source . To

justify his suspicion about the varacity of the witnesses, the Inquiry Officer in his report stated that while the PW 5 had in his arrest report regarding the applicant mentioned that the applicant was found to have consumed alcohol and was under intoxication, the medical report did not show any indication of the applicant having consumed alcohol or being under its influence. The Inquiry Officer has also noted that while in the arrest report it was stated that the applicant was drunk and intoxicated in the requisition to the CMO for medical examination nothing was stated about the applicant having consumed alcohol or being under its effect. We have also gone through the statement given by PW 5. He has stated that he had received verbal complaints about the applicant and that he was looking for him. Under these circumstances the Inquiry Officer according to us was perfectly justified in doubting the varacity of the testimony and the bonafides of the intentions of PW 5. Sub-inspector Sunil Kumar Sharma. Further the applicant ~~was~~ seemed to have ^{against} been proceeded under Sections 107/151 of the Code of Criminal Procedure. Section 151 of the Cr.P.C. empowers the Police Officer to arrest any person without warrant from a Magistrate for the purpose of preventing the commission of an offence. It has not been deposed by the PW 5 as to what offence he was to prevent by arresting the applicant. If as a matter of fact, the applicant was found lifting a chair with a view to hit Rajiv Ahuja with whom ^{he was allegedly quarrelling he} ~~he was allegedly quarrelling he~~ ^{for} the applicant could have been proceeded against ~~him~~ an offence

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of affray by the PW 5, that was not done. Further the statement of PW 5 that the applicant did not pay heed to the friendly advice of SHO PS R.K. Puram also does not find support from any evidence because of the SHO PS R.K. Puram was not examined as a witness. The case of the PW 5 that he arrested the applicant under the instructions of SHO PS R.K. Puram also is not established by any evidence. By his own statement as PW 5 that having received verbal complaints from shopkeepers and from others about threatening by the applicant, he was looking for him to expose the hostile animus which the SI was fostering against the applicant. Viewed in this respect we find considerable force in the observation of the learned Inquiry Officer that it was absolutely unsafe to place any reliance on the testimony of PW 5 which lacks corroboration with any independent evidence, and which lacked credibility. The Inquiry Officer who had occasion to see for himself the demeanour of the PW 5 could better assess his credibility than the disciplinary authority. The fact that after arresting the applicant who was also a police official and keeping him in custody from the evening of 24.8.89 no information about ^{him} was passed on to his office till 12.30 PM on 25.8.89 also looks quite unusual, and it is difficult to believe that PW 5 was led by pure public interest. To allege in the arrest report that the applicant was drunk while in the requisition to the medical examination no such allegation was made, and to accuse him of threatening the college staff and shopkeepers which is totally

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unrelated to the alleged incidence of 24.8.89 also shows that something other than the public interest was working in the mind of PW 5 to arrest the applicant. The view taken by the Inquiry Officer therefore is perfectly justified and we find little justification for the disciplinary authority to disagree with that for no proper reason.

7. Regarding the allegations that the applicant used to frequently visit the ARSD College and a complaint having being received from Shri M.M. Sharma, Professor of Physics, the said Professor appeared in the Inquiry and tendered evidence as PW 4. Mr. Sharma as PW 4 has stated that Raj Singh about whom he had made a complaint was not the applicant. Therefore, there is no evidence at all to establish that the applicant frequently visited ARSD College and threatened the staff. The Inquiry Officer was right in holding ^{So in} the inquiry ^{report} ~~proceedings~~. Regarding the failure on the part of the applicant on 24.8.89 to report for duty and to inform his office about the reason for absence, the Inquiry Officer has rightly held that as the applicant was under arrest and detention in the PS R.K. Puram, he could not report for duty and intimate about his absence. Therefore, the Inquiry Officer has rightly held that the applicant cannot be held guilty of dereliction of duty or lack of devotion to duty as he was incapacitated from reporting for duty or giving information about his absence.

8. On a careful reading of the Inquiry Report and a perusal of the evidence recorded at the Inquiry, we find that the Inquiry Officer has very carefully and

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and with an open mind evaluated the entire evidence and circumstances brought out in the Inquiry and has come to an impartial and flawlessly reasonable conclusion. The disciplinary authority has in his show cause notice issued to the applicant on receipt of the Inquiry Report disagreed with the finding of the Inquiry Officer and proposed to impose on the applicant a punishment of dismissal on the ground mentioned in para 2 of his show cause notice with the above observation:

"I have carefully gone through the findings of the EO and disagreeing with him on the ground that the defaulter constable neither informed the department nor did he turn up for duty on 24.8.89. Further the statement of Shri Rajiv Ahuja (PW 2) is very much clear that Const. Raj Singh (defaulter) quarrelled with him. This all is not expected from a person of a disciplined force....."

What is extracted above is hardly any reason at all for disagreement, because Rajiv Ahuja who is PW 1 and not PW 2 as stated in the show cause notice had not stated anything to implicate the applicant with the quarrel as Rajiv Ahuja had stated that the applicant did not quarrel with him. The observations of the disciplinary authority that it was clear from the statement of Rajiv Ahuja that the applicant quarrelled with him is not at all true to fact, while the applicant was under the police custody, he could not have reported for duty or informed his office about his absence. While the applicant had taken this stand in his reply to the show cause notice, the disciplinary authority in his order dated 25.5.1990

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brushed aside this contention. The contention of the applicant that he was not a party to the quarrel was not found correct by the disciplinary authority. The observation of the disciplinary authority about this in the impugned order is as follows:

"He has completely denied being a party to the quarrels which took place at Daula Kuan on 24.8.89. The contention is not found to be correct when seen in the light of the statements of P.W-1, P.W-4, and D.W-2. The E.O. has also observed in his finding that "The contention of the defaulter is not accepted as he seems to have won over the witness as P.W.-1 clearly stated Const. Raj Singh was also there in the crowd and because of scuffle he also fell down. In case the defaulter has not indulged in the quarrel how could have he fallen down. The entire sequence of events clearly point out to his involvement in the quarrel as he was known almost to everyone in the vicinity i.e. the shop-keeper and others."

When there is a crowd of people and when a scuffle between some people takes place because of the pull and push, a person who is not participant to the scuffle may also fall down and therefore though PW 1 has also stated that the applicant who was in the crowd fell down cannot be considered as a piece of evidence to come to the conclusion that that person took part in a scuffle especially when the eye witness clearly states that that person did not participate in that scuffle. Regarding the allegation that the applicant visited ARSD College and Daula Kuan Market and threatened the staff none has given any evidence in support thereof. The PW 4, the Professor has stated that Raj Singh about whom he

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made a complaint was not the applicant, in spite of the disciplinary authority has observed as follows:

"He has also denied the charge of visiting ARSD College and Dhaula Kuan Market and threatening the staff and shopkeepers there. His presence at the market at Dhaula Kuan clearly proved by the fact of his arrest and involvement u/s 107/151 Cr.P.C. from the Market. As such this contention is not justified because he failed to give valid reason for going to Dhaula Kuan Market."

The observation of the third respondents is absolutely perverse. Just because the applicant was found in Dhaula Kuan Market, he could not be held guilty of going to the ARSD College and threatening the staff especially in the light of the evidence tendered by PW 4. The applicant's presence at Dhaula Kuan has been explained as he has stated that he was waiting for a bus. The disciplinary enquiry has also found him guilty for not reporting for duty and for not informing his inability to report for duty and attributed this to lack of devotion to duty. When the applicant was under the custody of R.K. Puram Police Station from the evening of 24.8.1989 till 12.30 PM of 25.8.89, he could not have reported for duty and would not have been in a position to intimate his office of the circumstances as he was not free to communicate while under police custody. Therefore, the finding of the disciplinary authority that the applicant is guilty, disagreeing with the well reasoned finding of the Inquiry Officer that the guilt of the applicant has not been established, on flimsy and unreasonable ground cannot stand the scrutiny of the reasonableness.

9. We are of the considered view that in the face of the evidence available on the record of the Inquiry Officer, it is not possible for any

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reasonable person to come to the conclusion that the applicant was guilty of the charges. The findings of the officer on a detailed impartial and careful analysis of the evidences and circumstances disclosed during the Inquiry ~~are~~ perfectly justified and we are of the considered view that the disciplinary authority has not clearly applied an impartial mind to come to a different finding disagreeing with the impartial, cogent and convincing and irresistible finding of the Inquiry Officer.

10. We are conscious of the fact that it is settled principle in service jurisprudence that once an enquiry is held in conformity with the rules the courts shall not generally interfere with the finding. The courts will see only whether the decision making process was proper or vitiated. If

The a view that once an enquiry is held in accordance with the rules then the courts and the tribunals shall not interfere with the finding ^{is} subject to the exception that, if the finding is based on no evidence at all and is perverse the court can interfere. Otherwise the judicial scrutiny of administrative action will be rendered meaningless. If the decision making authority ignore evidence totally ^{and bases his finding on} then ~~presenting~~ undoubtedly the court must interfere lest the court will be failing in its duty, and the situation will lead to miscarriage of justice.

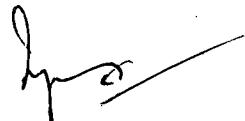
11. The impugned order of punishment of dismissal from service is therefore wholly unjustified under the circumstances explained above.

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12. A careful reading of the order of the Additional Commissioner of Police, Respondent No. 4 shows that the Fourth Respondent has not carefully considered the appeal and the connected file and that his order suffers from lack of application of mind.

13. In the result, the impugned order of third respondent dated 25.7.1990 which is confirmed by the order of the Fourth Respondent (Annexure 'E') is set aside and the respondents are directed to reinstate the applicant forthwith with continuity of service and to give him all consequential benefits including full back wages which shall be paid to him within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.


(K. Muthukumar)
Member (A)


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

Mittal