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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.2588/2004

Friday, this the 16th day of March 2007

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

Inspector Pushkal Sharma
No.D/1931
Presently posted at 9th Bn DAP
New Delhi
R/o Flat No.14, Pocket F/25
Sector 7 Rohini, Delhi

..Applicant

(By Advocate: Ms. Jasvinder Kaur)

Versus

Government of NCT of Delhi
Through Commissioner of Police
Police Head Quarters,
ITO New Delhi

..Respondent

(By Advocate: Shri Om Prakash)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J):

Inspector in Delhi Police assails the order of penalty dated 27.3.2003 imposing upon a major penalty of permanent forfeiture of two years' approved service entailing reduction in pay and also an order passed in appeal on 7.8.2003 upholding the punishment.

2. Following charges have been alleged against the applicant:

"CHARGE

I, S.S.Grewal, DCP/6th Bn. DAP, EO, charge you, Inspr. Pushkal Sharma, No.D/1931, that while posted at P.S.Alipur, as Addl. SHO, you performed night patrolling during the night intervening 14/15.8.99 and recorded your arrival from patrolling vide D.D. No.59-B, at 8.40 A.M.

Thereafter, you left the Police Station for your residence around 9.A.M. on your own without information/permission of any competent authority. You came back around 5.15 P.M. and

again left the Police Station immediately for Ali Pur Stadium and then to Darya Ganj, to collect your Uniform from a tailoring shop.

You remained absent from the Police Station during the most of the day on 15.8.99 despite the fact that police personnels are supposed to remain present for duty on important occasions like Independence Day. It is obligatory for an officer of the rank of Addl. SHO to remain present in the Police Station especially in the absence of SHO, on an important occasion like Independence Day.

You also did not reflect your movements in the daily diary which is in violation of the provisions of P.P.R.

Had you not left the Police Station in this manner, then you would have supervised the interrogation of the suspect and the mishap of custodial death in the Police Station could possibly have been avoided.

The above act on the part of you, Inspr. Pushkal Sharma, No.D-1931, amounts to gross misconduct, carelessness and dereliction in the discharge of your official duties. This is punishable under section 21 of D.P.Act, 1978."

3. Applicant in his defence statement though stated that he had left the Police Station only after arrival of the SHO but admitted that he had left the Police Station in a very casual and routine manner and sought pardon. The following discussion and conclusion had been arrived at by the inquiry officer:-

"DISCUSSION

From the statement of PW-1, PW-3 and PW-4, it has been revealed that Inspr. Pushkal Sharma, the then Addl. SHO/Alipur after performing his night patrolling during the night intervening 14/15.8.1999, at about 9.00 AM on 15.8.1999, left the police station without any information/permission of his Senior Officer and during most of the day, he remained absent from the police station without making any movement in the daily diary registers "A" & "B". The defaulter Inspr has also confessed in the last para of his defence statement that he had left the police station on 15.8.1999. As such he has violated the provisions of P.P.R.

CONCLUSION

In view of the evidence of the PWs which came up on record during the D.E. proceedings, I am of the opinion that the charge dated 4.1.2002 framed against Inspr. Pushkal Sharma is established."

4. When this has been represented, the disciplinary authority, with the following order, imposed a major penalty upon the applicant:-

"I have gone through the representation submitted by the Insp. Pushkal Sharma, D/1931 as well as heard him in person on 21/01/2003. I am not convince with the pleas advanced by the Insp in his written representation. He had left the PS without any permission/information of his senior officers and remained absent from the PS without making any movement in the daily diary register. Keeping in view of finding submitted by the E.O. as well as other material available on record, I award him the punishment of two years approved service forfeited permanently entailing subsequent reduction in his pay.

5. On appeal, the appellate authority passed the following order affirming the punishment:

"Moreover, the charge framed and served upon the appellant was proved during the DE proceedings. Therefore, the punishment imposed upon the appellant is justified and is commensurate with the gravity of misconduct Committee by him. No infirmities were committed either by the E.O. or by the Disciplinary Authority in finalizing the departmental proceedings. None of the appellant's pleas has any force. Therefore, the appeal preferred by the appellant is rejected."

6. Learned counsel for applicant states that one of the charges against the applicant is that his absence had occasioned the mishap of custodial death, which weighed in the mind of the disciplinary authority to inflict upon him a major penalty and accordingly, the punishment imposed upon the applicant is not commensurate with the misconduct.

7. Learned counsel places reliance on the above fact recorded by both the disciplinary and appellate authorities in their orders to substantiate the aforesaid view.

8. On the other hand, learned counsel for respondents vehemently stated that the applicant has been rightly punished after

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due procedure followed in conduct of the departmental inquiry. According to him, when a high security alert has been announced on Independence Day, the applicant had not only left the Police Station abruptly but also remained absent without making any movement in the daily diary register. As such, his movements were not known.

9. Accordingly, it is stated that the applicant has only been punished for his unauthorized absence in such a situation and has been inflicted upon a penalty, the gravity of which has already been examined by the appellate authority. As such, this Court has no jurisdiction to entertain this matter unless the conscience is shocked to alter the penalty in any manner.

10. We have carefully considered the rival contentions of the parties and perused the records.

11. In the conduct of disciplinary proceedings, the Tribunal in judicial review has no jurisdiction to either go into the correctness of the charge or to appreciate the punishment. In the proportionality of punishment applying the *Wednesbury* principle of reasonableness, if the penalty imposed shocks the conscience of the Tribunal, only then the matter can be interfered with.

12. From the perusal of the charge, no doubt, it has been alleged against the applicant that his absence has in any manner contributed towards custodial death in Police Station, which could have been avoided, however, the applicant has not been blamed in any manner in the inquest report. The inquiry officer while establishing the charge has proved only the charge against the applicant of unauthorized absence without following the provisions of PPR.

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13. The disciplinary authority, though mentioned the aspect of custodial death but it is a reproduction of the charge. In the penalty made paragraph when the disciplinary authority records guilt of the applicant and awarded him punishment, it is basically for applicant's absence unauthorizedly.

14. The appellate authority has also not considered the gravity of misconduct on the basis of custodial death but only the punishment on account of remaining absent from duty has been inflicted upon by the disciplinary authority.

15. As the applicant being a responsible officer in the rank of Inspector had the audacity to absent himself without following the laid down procedure by seeking permission and as he had failed to establish this charge that he had left the Police Station only after seeking the prior permission of the SHO, his callous and negligent act to have left the Police Station when a general circular issued on the Independence Day mandated all the officers to remain on duty in the wake of a security threat to prevent any untoward incident. This absence, unlike ordinary absence, shows a character of a grave misconduct. As such, when the appellate authority has recorded a specific finding as to the proportionality of punishment, our conscience is not shocked to alter this punishment in any manner, which is reasonable in the circumstances.

16. Accordingly, OA is bereft of any merit and is dismissed. No costs.

NRanjan
(Neena Ranjan)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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