

5

Central Administrative Tribunal  
Principal Bench

O.A.No.3025/2004

Hon'ble Shri Justice B. Panigrahi, Chairman  
Hon'ble Smt. Chitra Chopra, Member(A)

New Delhi, this the 10<sup>th</sup> day of November, 2006

Insp. Om Prakash Yadav  
No.D-I/647.  
S/o Shri Surjit Singh  
R/o 145/B, Katwaria Sarai  
New Delhi.

... Applicant

(By Advocate: Shri Arun Bhardwaj)

Vs.

1. Govt. of NCTD, through  
Commissioner of Police  
Delhi Police, MSO Building, PHQ  
I.P. Estate,  
Delhi.

2. The Joint Commissioner of Police,  
DAP, PHQ, I.P.Estate, Delhi. .... Respondents

(By Advocate: Smt. Sumedha Sharma)

ORDER

By Justice B. Panigrahi, Chairman:

Applicant assails the final order passed by the disciplinary as well as appellate authorities in a departmental proceeding against the delinquent applicant whereby there was an order of forfeiture of two years approved service permanently, entailing reduction in his pay from Rs.8900 to Rs.8500 per month. It was also directed that the suspension period from 30.5.2002 to 12.7.2002 shall be treated as period 'not spent on duty'.

B

2. The applicant is working as Inspector in Delhi Police and claimed to have possessed clean and unblemished record with few commendation certificates to his credit. He was unfortunately dealt with in a departmental proceeding on the allegation of misbehaviour and assault resulting injury under the influence of alcohol. Although from the fact situation, it has emerged that the conduct of the applicant amounted to a cognizable offence, yet the authorities concerned remained satisfied only by departmental proceedings without resorting to any criminal proceedings. Prior permission of the Additional Commissioner of Police (for short as 'ACP') was not taken before directing disciplinary inquiry.

3. The brief facts of this case are that the applicant, Om Prakash Yadav, No.D-I/647, while posted as TI/Patel Nagar Traffic Circle, on 29.5.2002 visited the residence of Ms. Rekha Sharma, Additional District & Sessions Judge in a drunken condition. On her complaint, when the PRG team rushed to Ms. Sharma's residence, the applicant was not found present at the spot. He could neither be traced through wireless nor was available at his residence but his wife reportedly said that he had gone to his village. The traffic gypsy No.DL-1CF-6448 allotted and being used by the applicant could also not be traced nor was there any response from the Wireless Set fitted in this vehicle. At about 7 AM in the morning of 30.5.2002, the applicant recorded surreptitiously an entry in the Circle Daily Diary that he left to see his father on 'permission' being granted to him by the ACP but in fact no permission was granted to him either by ACP or by any other superior officer.

3

4. The inquiry officer, with the approval of the disciplinary authority, framed the following charges:

"I, Anil Kumar Ojha, DCP/Traffic (Southern Range) Enquiry Officer, charge on you Insp. Om Prakash Yadav, No.D-I/647 of indiscipline, negligence, dereliction of duty and gross misconduct not becoming of a police officer for the following reasons:-

1. That on 29.05.2002, you while posted as TI/Patel Nagar Traffic Circle visited the residence of Ms. Rekha Sharma, ADSJ in a drunken condition. When the PRG Team reached the spot on receipt of her complaint, you were not found at the spot. You could neither be traced through wireless nor were you available at your residence, where your wife reportedly stated that you had gone to your village. The Govt. Vehicle (Gypsy) bearing No.DL-1CF-6448 which was allotted to you for the purposes of performing Govt. duty also could not be traced. There was no response from the Wireless Set fitted in the Govt. Gypsy allotted to you. At about 7.00 AM next morning (30.5.2002), you recorded an entry surreptitiously in the daily diary of the Circle Office that you are on 'permission' granted by the ACP, while no 'permission' of any kind was granted to you by the ACP or any other superior officer.
2. That on 29.05.2002 at about 8.30 PM you went to House No.28, South Patel Nagar, New Delhi (residence of Shri L.K. Joshi, brother, of ADSJ Ms. Rekha Sharma) in an Esteem Car driven by HC Sat Narayan, No.628-T. You enquired about Ms. Rekha Sharma, ADSJ from her peon Mr. Amar Singh Nayal, who asked you to wait, as she would be reaching shortly. On this you abused and slapped the orderly Shri Nayal. When Shri L.K.Joshi who was in the house found what was happening and objected to you coming there in a drunken condition, you used abusive language, pushed Mr. Joshi and then left the premises in the same Esteem Car alongwith HC Sat Narayan. Mr. Joshi then made a PCR call on which the PCR van as well as SHO/Patel Nagar and SI Gokul Ram from PS Patel Nagar reached the spot.

3

42

-4-

However, they could not find you there as you had already left the spot.

3. That on reaching the Circle Office in the Esteem Car, you lodged D.D.No.28 at 9.20 PM reporting therein that you went to H.No.28, South Patel Nagar, New Delhi in order to contact Ms. Rekha Sharma, ADSJ, who was allegedly calling you for the last three days regarding an earlier incident of misbehavior by PCR staff. That you met some illiterate persons who tried to misbehave with you due to which you got annoyed and returned. Thereafter, you alongwith HC Sat Narayan went to your residence in the same car. HC Sat Narayan also left for his house after leaving you at your residence in Katwaria Saria.
4. That you neither informed any senior officer nor traffic control room about the incident but merely lodged a D.D.No.27 in his regard in the Circle office. HC Krishan Kumar, No.160-T, MHC(M) Patel Nagar Traffic Circle recorded vide D.D.No.28 at 9.20 PM that he got the official Gypsy No.DL-1CF-6448 allotted to you repaired and parked the same in the Circle Office. He did not accompany you to the residence of Shri L.K.Joshi.
5. That after the above incident at Ms. Rekha Sharma's residence, SI Gokul Ram, No.D-1099 of PS Patel Nagar alongwith PRG staff of Traffic tried to trace you, but you could not be found either at your office or in the area or at your residence. You did not respond on wireless when called several times by Traffic Control Room. You also did not respond on your residential telephone.
6. That the PRG Team along with local police visited your house where your wife informed that you had gone to your native place out of Delhi. You deliberately remained not available so that you could not be got medically examined.
7. That on 30.05.2002 at about 9.40 PM, ACP/T(West) was informed by Control Room that despite repeated calls you were not responding. He reached Patel Nagar Traffic Circle where he went through the contents of

B

25

-5-

D.D.No.2 dated 30.05.2002 vide which you had informed by telephone that you are not feeling well and going to consult a doctor. You had also availed medical rest on two earlier occasions without obtaining permission from concerned senior officer.

The above acts on the part of you Insp. Om Prakash Yadav, No.D-1/647 renders you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

5. In response to the said charge, the applicant seems to have submitted his written statement of defence whereupon 13 PWs and 2 Defence Witnesses were examined. The inquiry officer on thorough resume of the evidence placed on record observed that the charges stood fully proved against the applicant. The disciplinary authority, while agreeing with the observations of the inquiry officer, imposed the aforesaid punishment as indicated above.

6. The applicant undeterred by the punishment imposed by the disciplinary authority, preferred an appeal before the statutory appellate authority who also after the thorough discussion of the evidence, rejected the appeal purportedly filed by the applicant. Therefore, being aggrieved by and affected with the orders passed by the disciplinary authority as well as the appellate authority, the applicant has filed this case.

7. Mr. Arun Bhardwaj, learned counsel appearing for the applicant has, at the outset, invited our attention that the reasoning of the disciplinary authority as well as the appellate authority are based on parody of reasons. In this case, the applicant was highly prejudiced for non-consideration of the materials on record placed before the disciplinary authority. Some of the significant features have been

12

placed before us in the course of the submission, i.e., (i) Where the incident allegedly took place was not used as official residence of Ms. Rekha Sharma (ii) No medical report showing that the applicant had consumed liquor at the time of alleged incident was placed in the file. (iii) No complaint was allegedly filed by Ms. Rekha Sharma as regards the incident and (iv) Although official vehicle supplied to the applicant was available, yet the disciplinary authority observed that neither the official vehicle nor the applicant was traceable following the incident.

8. The learned counsel for the applicant has advanced an inexorable plea that the inquiry officer himself assumed the role of prosecutor and accordingly decided as to which of the witnesses were to be examined to bring home the charge against the delinquent, which obviously caused severe prejudice to the applicant. The inquiry officer could not have played the role of a prosecutor. Thus, the framing of charge itself could not be said to have been properly done. Such finding arrived by the inquiry officer would, therefore, be regarded as not more than a mere pretence of proof.

9. Mrs. Sumedha Sharma, learned counsel appearing for the respondents while repelling the aforesaid submission, has contended with strong intensity of conviction that in this case, the respondent authorities left no stone unturned to bring home the charge to the delinquent. The delinquent being a responsible police officer in the rank of Inspector (Traffic), should not have behaved in such a careless and reckless manner by going to the residence of a high ranking judicial officer. There was enough evidence to show that even the applicant admitted to have gone to the house of Ms. Rekha Sharma.

Her brother Mr. L.K.Joshi was present at the time of incident. The inquiry officer had strong evidence for recording reasons of guilt against the applicant. The evidence against the applicant was so clinching and convincing that the disciplinary authority had no other way than to accept the findings.

10. In so far as framing of the charge by the inquiry officer is concerned, the Delhi Police (Punishment & Appeal) Rules, 1980 authorize the inquiry officer to frame charge against the accused officer. The inquiry officer thus acted very diligently and carefully within the frame work of Delhi Police Mannual. It is further stated that the disciplinary authority as well as the appellate authority, had taken a lenient view by imposing lesser punishment. The applicant could have been visited by higher punishment as the allegation stated in the charge prima-facie appears to be serious.

11. Let us carefully ponder into the submission advanced by the learned counsel for the applicant. At the outset, he has brought to our notice that there was no complaint by Ms. Rekha Sharma, the then Additional District & Sessions Judge. But we find from the record that on the day following the incident, on the complaint of Ms. Rekha Sharma, JCP passed an order in the following manner:

"It is reported that ADSJ Ms. Rekha Sharma has complained against Inspt. Om Prakash Yadav, TI/Patel Nagar Circle that on the night of 29.5.2002 he visited her residence in a drunken condition. When the PRG team was rushed to Ms. Sharma's residence by DCP/Traffic, the Inspector was however not found. Attempts to raise him through wireless did not succeed, nor was he available at his residence – where his family reportedly said he had gone to his village. Traffic Gypsy Vehicle No.DL-ICF-6448 allotted to TI/Patel Nagar

28

-8-

could not also not be traced. It was further reported on the morning of 30.5.2002 that the Inspector had recorded an entry in the Circle Diary at 7 in the morning that he is on 'permission' granted to him by the ACP. A check with ACP/T(West) by DCP/Traffic (SR) however revealed to the contrary.

From the above, it is apparent that the conduct of the Inspector is un-becoming of a disciplined police officer, and hence he is placed under suspension forthwith and sent to Lines. A Preliminary Enquiry into the reported misconduct be conducted by ACP/T-PRG Cell to ascertain and established the actual facts of the incident. Action taken be reported.

Sd/-  
(Maxwell Pereira)  
Joint Commissioner of Police,  
Traffic, New Delhi"

12. Therefore, on a bare perusal of the order passed by the then Joint Commissioner of Police (Traffic), Maxwell Pereira on 30.5.2002, it is clearly established that Ms. Rekha Sharma, the then Additional District & Sessions Judge, had made a complaint about the incident. Whether such complaint was verbal or written is immaterial but it put the authorities into motion.

13. Even during the same night, i.e., 29.5.2002, Shri L.K. Joshi the brother of Ms. Rekha Sharma alleged that the applicant visited the residence of Ms. Rekha Sharma in drunken condition. On the basis of the aforesaid complaint, the PRG team rushed to Ms. Sharma's residence. By the time they reached at the spot, applicant had already decamped from there. Extensive search was made during the night but the applicant was not available. However, his wife reported that he had gone to his village. Therefore, from the action taken by the respondents, in quick succession, it could be

3



-9-

gathered that immediately after the incident, the applicant had left the spot and also his house, without informing to his superior.

14. In this case, Mr. L.K.Joshi could not be examined, since by the time the departmental proceedings conducted, he had already expired. But non-examination of Mr. Joshi could not, however, weaken the prosecution story put forth against the applicant.

15. Another significant feature to be noticed is that ~~while~~ the applicant was not subjected to medical test, it was vehemently argued by Mr. Arun Bhardwaj, the learned counsel appearing on behalf of the applicant, that had the applicant had been examined medically, it could have been confirmed whether he had consumed alcohol in the night of the incident. Since no such report has been made available, it cannot be construed that he was under the influence of the liquor. Such submission does not hold any water inasmuch as within hours of the incident, the applicant not only left the place but also his residence. He did not respond to the Wireless call of the respondents. Had he been available, there could have been an opportunity for the respondents to send him for medical examination. In this backdrop, even, apart from the medical examination, if the evidence with regard to consumption of liquor was sufficient, then the observations of the disciplinary authority cannot be found fault with.

16. A preliminary inquiry was also conducted following the aforesaid incident. In the preliminary inquiry, 12 witnesses have been examined in support of the prosecution version. It is true that the evidence of preliminary inquiry cannot be used against the

delinquent in the final inquiry. On the basis of the preliminary inquiry report, as envisaged under Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980, the disciplinary authority directed to initiate a disciplinary proceeding in the matter of major punishment. The inquiry officer accordingly prepared the submissions summarizing the misconduct purportedly committed by the accused officer and supplied him the prosecution witnesses together with the details of the evidence and documents relied upon by the prosecution. On the basis of those materials, the applicant had submitted a written report. Such report was neither convincing nor satisfactory, therefore, the inquiry officer framed charge in pursuance of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980.

17. Mr. Bhardwaj, learned counsel has raised an interesting submission that the inquiry officer ought not to supply the statement of witnesses or the material documents and he himself could have framed the charges. In this backdrop, it would have been appropriate if the disciplinary authority had framed the charges against the delinquent applicant, and after framing of charges, a de-novo inquiry could have been conducted.

18. On a bare reading of the provisions of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980, we find that the Rules permit that either the disciplinary authority or the inquiry officer appointed by him would conduct such inquiry. After such evidence being recorded, if the Police Officer does not admit the misconduct, the inquiry officer thereafter would proceed to record evidence in support of the accusation. All the witnesses shall be examined in

31

-11-

presence of the accused-delinquent who shall be given full opportunity to take notes of their statements and cross-examine them. In fact, the applicant did take part in the inquiry and cross-examine the witnesses after framing of charges and after such exercise is over, it would not be appropriate for the applicant again to turn a round and say that the procedure adopted by the inquiry officer vitiates the disciplinary proceedings. Since the aforesaid inquiry conducted by the inquiry officer was pursuant to Rule 16(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980, the observation arrived at by the inquiry officer cannot, therefore, be found fault with.

19. Before the inquiry officer, prosecution has led the evidence of 13 witnesses and the PW-14, Shri L.K.Joshi could not be examined. On the other hand, the delinquent has produced two witnesses in his defence. The inquiry officer has also recorded reasons for non-examination of Mr. L.K.Joshi since he was not available at the time of examination as he expired on 04.01.2003.

20. The PW-I, who admittedly accompanied the applicant in the Esteem Car to the house of Mr. L.K.Joshi, has stated that within few minutes after arrival at the house of Mr. Joshi, the applicant abruptly returned to the Car and directed him to move to the Circle office. On reaching there, the applicant lodged a report in the Daily Diary himself. It is curious enough to state that even though the applicant left the house of Mr. L.K. Joshi within 2/3 minutes, he did not divulge to Head Constable Satnarain that he was abused or manhandled either by Mr. Joshi or by the orderly of Ms. Rekha

32

Sharma. The so called DD entry after arrival appears to be self serving/defence which be used as a ruse at subsequent point of time. He also testified that there was smell of alcohol but he could not confirm it as he never consumed alcohol. From this, it can never be assumed that PW-I did not speak about the consumption of liquor by the applicant.

21. PW-2 stated that the official vehicle went out of order, therefore, the applicant proceeded in a private Car. From resume of the evidence placed before the inquiry officer, it is seen that the applicant went to the house of brother of Ms. Rekha Sharma, namely, Mr. L.K.Joshi. The evidence of PW-11 also lends great significance while deciding the culpability of the applicant. He unequivocally deposed that the applicant was in a drunken stage. The applicant slapped him at his right cheek. PW-12, who conducted the preliminary inquiry, has also corroborated the version of the PW-11. His testimony further reinforces the fact that the applicant had availed medical rest without obtaining permission from the senior officials.

22. PW-13 who was SHO, Patel Nagar narrated that in the night of the incident on 29.5.2002 at about 9.05 PM, he received a PCR call in the Police Station which was recorded vide DD entry NO.62-B. In the said DD entry, it was mentioned that a person in drunken state of mind was found harassing the resident of 28, South Patel Nagar. On receipt of a call, SI Gokul Ram, reached at the spot. The SI told him over telephone that this is the residence of Ms. Rekha Sharma, ADSJ. He met the Additional District & Sessions Judge. Her brother Sh. L.K.Joshi handed over a written complaint


recording the misbehaviour of the applicant. He also collected materials that the applicant was found drunken. The statement of this witness appears to be truthful since no time gap was left between the incident and also arrival of this witness.


23. Let us advert to the submission raised by the learned counsel for the applicant as to whether any pre-requisite condition is necessary to be complied with by the respondent-authorities as envisaged under Section 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980 to take prior approval of the Additional Commissioner of Police concerned. In this case, the Joint Commissioner of Police has already directed the Deputy Commissioner of Police to initiate proceedings against the applicant. Under Rule 14(2) of the said Rules, even a Deputy Commissioner of Police is competent to impose the punishment of the above nature which in fact has been done here.

24. Undisputedly, the disciplinary authority did not propose to initiate any criminal case against the applicant. Therefore, the applicant was not prejudiced if the permission was not taken from the Additional Commissioner of Police for initiating only departmental inquiry and not a criminal proceeding. The disciplinary proceeding was initiated under Rule 16, which, however, does not stipulate for taking approval from the Additional Commissioner of Police. Therefore, the disciplinary proceeding initiated against the applicant cannot be construed to be illegal or irregular for want of taking approval from the ACP. In our view also, it was unnecessary.

25. It is well settled position of law that in a disciplinary inquiry, strict applicability of Evidence Act is not applicable. The finding of the disciplinary authority should be based on preponderance of probabilities. Since all the witnesses had been examined after framing of charges, the stand taken by Mr. Bhardwaj that they were not subjected to cross-examination by the applicant seems to be without any factual support.

26. Being an officer in the rank of Inspector, going to the house of a responsible judicial officer and misbehaving with the inmates therein deserves no lenient punishment. However, since the disciplinary authority and the appellate authority have already dealt with him leniently, we therefore, did not find any mitigating or extenuating circumstances, which warrant us to interfere with the observations and punishment imposed by them. Accordingly, the application, being devoid of merit, is dismissed.

  
(Smt. Chitra Chora)  
Member(A) 10/x1/06  
/Rao/

  
(B. Panigrahi)  
Chairman