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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.3047/2004

**Hon'ble Mr.Justice B. Panigrahi, Chairman
Hon'ble Mrs. Chitra Chopra, Member (A)**

New Delhi, this the 20th day of April, 2006

**SI Om Singh No.D3196,
S/o Shri Jai Parkash,
R/o Village PO Alipur Kalam,
Distt. Muzaffar Nagark,
U.P.**

....Applicant

(By Advocate: Shri Sachin Chahan)

Versus

- 1. Government of N.C.T.D.,
Through Its Chief Secretary,
Delhi Sachivalaya,
New Delhi**
- 2. Joint Commissioner of Police,
Armed Police,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi**
- 3. Dy. Commissioner of Police IIIrd Bn.,
DAP Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi**

....Respondents

(By Advocate: Mrs.Renu George)

Order(Oral)

Justice B. Panigrahi, Chairman

The applicant has claimed to have possessed clean and unblemished service record. It seems that one UTP Jagminder Singh son of Shri Ranjit Singh charged under Section 392/379/148/149 IPC, had escaped from the

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judicial custody while on the way to be produced before the Judicial Magistrate. It is alleged that the applicant was incharge of the security staff as the Sub-Inspector. He was assisted by other four Constables. Disciplinary proceedings were initiated against the delinquent-applicant who, in defence, submitted his statement that he was not at fault since all of a sudden, he had heart compliant whereafter he was taken to Mohan Nursing Home, Yamuna Vihar, Delhi. The enquiry officer after taking stock of the situation and considering the evidence placed before him, however, was inclined to exonerate the applicant of all the charges framed against him. The following charges were leveled against the applicant:

"I, K.S. Dalal, ACP/E.O. DE Cell, hereby charge you SI Om Singh No.D-3196, HC Jasbir Singh No.7160/DAP, Const. Satender No.2686/DAP, Ct. Dharambir No.7526/DAP and Ct. Rajinder No.2221/DAP that while posted in IIIrd Bn. DAP, you all were detailed on escort duty over UTP Jagminder Singh S/O Sh. Ranjeet Singh R/O 14 Canadian Enclave Ferozpur Road, Ludhiana (Punjab) for producing before the concerned trial court in case FIR No.74/2000 u/s 392/379/148/149 IPC P.S. Ram Pura Pull, Distt. Bhatinda Punjab. You all constituting escort guard under the supervision of SI Om Singh No.D-3196 reportedly departed vide DD No.27-A dated 8-9-2003 3rd Bn DAP, from Delhi to Bhatinda Punjab. But you, SI Om Singh, No. D/3196 knowingly and intentionally did not receive a service revolver from the Kot and did not proceed with the Escort Guard to Bhatinda with your, common intention. After production in the concerned court at Bhatinda on 9-9-2003 the UTP Jagminder Singh ran away from the lawful custody of the remaining escort guard for which a case FIR No.464/2003 u/s 224/225 IPC was registered in P.S. Kotwali Bhatinda. On receipt of this information you, SI Om Singh No.D-3196, managed your admission in Mohan Nursing Home Yamuna Vihar Delhi. As per rule 29 (i) of Delhi Police (Punishment & Appeal) Rules, 1980 a searching enquiry was also conducted by Sh. Ravi Dutt ACP/HQ IIIrd Bn. Who also established that the UTP has

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escaped from your lawful custody due to your negligence and carelessness.

The above act on the part of all of you amounts to be a grave misconduct, negligence and dereliction in the discharge of your official duty which renders all of you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

2. The enquiry officer after exonerating the delinquent-applicant of the charges, submitted his report before the disciplinary authority. However, the disciplinary authority did not agree with the opinion of the enquiry officer on the following grounds:

"1. The observation of the E.O. that the charge against Si Om Singh does not prove in view of his illness is not accepted. If the defaulter was not feeling well at New Delhi Railway Station he should have informed to the department immediately and should have asked for his substitute as commanding officer of the escort party, but he did not do so.

2. He was admitted in Mohan Nursing Home, Yamuna Vihar, Delhi which is very far away i.e. 15 Kms from the New Delhi Railway Station. If he was in serious condition he should have reached to nearest Govt./Private Hospital. It shows that he had managed the admission in the Mohan Nursing Home, Yamuna Vihar, Delhi.

3. If he was facing any difficulty, he should have sorted it out by adopting due procedure. He did not seek leaves/permission as per leave rule 19 (5) which envisage that an application alongwith a copy of medical certificate be made and orders of the competent authority awaited and the leaves be availed after due sanction. Since he was in Delhi, it was not difficult for him to follow the rules but he did not do so under the impressions that medical certificate can confer a right to him to avail the leave without sanction which is to be curbed as it dislocate deployment of manpower and breeds indiscipline."

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3. Thereafter he issued notice to the delinquent-applicant to show cause as to why suitable punishment should not be imposed upon him. In reply thereto, the applicant submitted his statement of defence but the said defence did not persuade the disciplinary authority to take the same view as that of the enquiry officer and accordingly inflicted a punishment of forfeiture of two years' approved service permanently entailing reduction in his pay from Rs.7250/- to Rs.6900/-. Being aggrieved by the order of the said punishment, he preferred an appeal before the appellate authority who after taking a lenient view, reduced the penalty of forfeiture of two years' approved service permanently to that of one year approved service permanently. Being undeterred by the aforesaid punishment, the applicant has filed this case.

4. Shri Chauhan, learned counsel appearing for the applicant has submitted that in this case there was no credible evidence on the part of the disciplinary authority to disagree with the observations of the enquiry officer and to take a different view. He has also placed evidence of Dr.Arun Aggarwal who was examined as DW-4 before the enquiry officer and categorically stated that the delinquent-applicant was taken to his Nursing Home in a semi-conscious state and was placed in ICU for observation. In view of such categorical evidence, the disciplinary authority could not have taken a different view without any further evidence. It has been further argued that the disciplinary authority could have summoned Dr.Arun Aggarwal at least for the purpose of cross-examination if he was not in agreement with the view of the enquiry officer. Shri Chauhan has strongly

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contended that before issuing the show cause notice, the disciplinary authority seems to have proceeded with a pre-determined mind to punish the applicant. At least, he could prima facie record a reason to disagree with the opinion of the enquiry officer and after considering reply to the show cause notice, could have taken a final decision. But in this case, no tentative reason was recorded and the disciplinary authority proceeded on the assumption that the applicant was guilty of not informing the authorities before joining the Nursing Home.

5. On the other hand, Ms. Renu George, learned counsel appearing on behalf of respondents submitted that in the event, the applicant had fallen ill and required immediate medical care, at that stage, he could have sent an information to the higher authorities for deputing some other person to keep a watch over the under trial prisoner Jagminder Singh. It was due to applicant's negligence and carelessness that the UTP managed to escape from the lawful custody of escorting party and, therefore, he has rightly been punished in the departmental proceedings.

6. To buttress his stand, Shri Chauhan, learned counsel for the applicant relied upon the judgment of the Delhi High Court in CWP Nos. 2665/2002 and 4593/2001 in the cases of Commissioner of Police vs. Constable Parmod Kumar and another and Commissioner of Police vs. Constable Jag Pravesh and another wherein it was held:

"12. It is true that a disciplinary authority is entitled to disagree with the findings of the Inquiry Officer.

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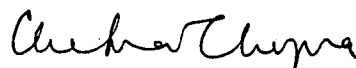
13. However, while disagreeing with such findings, he must arrive at a decision in good faith. He, while disagreeing with the findings of the Inquiry Officer, was required to state his reasons for such disagreement but such a decision was required to be a tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a final finding. The records clearly suggest that he had arrived at a final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."


7. After going through the judgment carefully, if we find that the disciplinary authority proceeded with a pre-determined mind, then the whole process of enquiry became a mere farce. The aforesaid judgment in CWP Nos.2665/2002 and 4593/2001 has been followed in the case of Head Constable Diwan Singh and others vs. Union of India and others (O.A. No.673/2003) decided on 15.9.2003. In the said case, the Tribunal took a view that in the disagreement note, there should be a speaking order giving tentative reasons in that regard. If the "tentative reasons" are not given, then it has to be construed that the disciplinary authority proceeded with a pre-determined mind to impose penalty upon the delinquent. From the ratio of the aforesaid judgment, we however do not approve the penalty imposed on the applicant whereby one year approved service has been forfeited permanently entailing further reduction in his pay.

8. In the circumstances, we have no other option but to remand the matter to the disciplinary authority who would be at liberty to pass a

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fresh order from the stage the findings were submitted by the enquiry officer, in the light of the judgment passed by the Hon'ble High Court in the case of Constable Parmod Kumar (supra) and order of the Tribunal in the case of Head Constable Diwan Singh (supra). With these observations, the O.A. is allowed and the orders passed by the disciplinary as well as the appellate authority imposing punishment upon the applicant, are quashed.


(Chitra Chopra)
Member (A)


(B. Panigrahi)
Chairman

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