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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.1643/2004**

**New Delhi, this the 4<sup>th</sup> day of ~~March~~ <sup>APRIL</sup>, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.Singh, Member (A)**

Ex. H.C. Prakash Chand  
S/o Sh. Mishri Lal  
R/o VPO Panhera Khurd  
PS Chaysa  
Distt. Gurgaon, Haryana.

.... Applicant

**(By Advocate: Sh. Arun Bhardwaj)**

Versus

1. Commissioner of Police  
Police Head Quarters  
I.P.Estate  
New Delhi - 110 002.
2. Joint Commissioner of Police  
Armed Police  
PHQ, I.P.Estate  
New Delhi.
3. Dy. Commissioner of Police  
III Bn., DAP, Vikas Puri  
New Delhi.

... Respondents

**(By Advocate: Sh. Ajesh Luthra)**

**ORDER**

**By Mr. Justice V.S.Aggarwal:**

Applicant was appointed as Head Constable in Delhi Police. By virtue of the present application, he seeks to assail the order passed by the disciplinary authority dated 5.3.2004 and of the appellate authority dated 20.5.2004. The disciplinary authority had dismissed the applicant from service and his appeal has also



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been dismissed. The relevant facts are that the following charge had been framed against him:

"I, Inspr. V.P.Dahiya, charge you, H.C. Parkash Chand Sharma, No.7102/DAP that on 5.10.2002, you were detailed as I/C Gaddi Guard female Jail Van No.DL-1V-0357. A.D.D. entry No.32B dt. 05.10.02 P.S. Uttam Nagar was lodged by Inspr. R. Ram Chandran, Addl. S.H.O. P.S. Uttam Nagar Delhi. The Addl. S.H.O. had alleged that you were found under the influence of liquor, lying un-conscious at Uttam Nagar Bus Terminal in proper uniform around 1.30 P.M., as per D.D.No.29A, III Bn. DAP. On your personal search a service pistol with 12 alive rounds, Rs.10,000/- and a passbook of S.B.I. was received from you. You were medically examined at D.D.U. Hospital, Delhi vide S.M.L.C. No.13304 dated 5.10.2002 by the doctor, through H.C. Bhagwati Prasad, No.7114/DAP. Doctor opined, "smell of alcohol in breath present" on the S.M.L.C.. The H.C.Bhagwati Prasad deposited Blood sample in General Store, III Bn. DAP on 05.10.02.

The above act on the part of you HC Parkash Chand No.7102/DAP amount to grave misconduct, negligence, carelessness, indiscipline and dereliction in the discharge of your official duties, which amount renders you, liable for disciplinary action and punishment as envisaged in section 21 of Delhi Police Act, 1978."

2. The inquiry officer had recorded a finding that the charge stood proved beyond any iota of doubt. The disciplinary authority thereupon recorded:

"I have carefully gone through the entire evidence brought on D.E. file and findings of the E.O. The defaulter H.C. was found under the influence of liquor far away from his duty point, which clearly proves that he is an indisciplined and irresponsible type of person. The defaulter did not submit any representation against the findings of the enquiry officer nor did he appear in the orderly room. In fact, he has no defence

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available to him. The charge of grave misconduct, carelessness, dereliction in the discharge of his official duties and unbecoming of Police Officer have been proved against him. He has lost all rights of sympathetic consideration, as leaving his duty point without permission is one the severest misconduct. There is also evidence against him about consumption of liquor during his duty hours as proved by his medical examination. He was carrying Govt. weapon with Ammunition when found in unconscious state. Continuance of such irresponsible element in the service may adversely affect others. He, therefore, deserves stringent punishment. Holding him responsible for the severest misconduct and agreeing with the findings of the E.O., I.P. DASS, Dy. Commissioner of Police, III Bn. DAP Delhi, therefore, propose a penalty of dismissal from service and accordingly hereby order to dismiss the defaulter HC Parkash Chand, No.7102/DAP from service with immediate effect. His suspension period is also decided as period not spent on duty. He will deposit all Govt. belonging in his possession like identity Card, CGHS Card, appointment Card and Kit articles with the respective branches/stores."

3. As already pointed above, the appeal had been dismissed.

The orders are being assailed on various grounds.

4. The application is being contested.

5. According to the respondents, the applicant was detailed as Incharge Gaddi Guard of Female Jail Van. He alongwith other Guard members departed from Vikas Puri Police Line after collecting revolver and ammunition from Kot. After boarding the jail van for female under trial prisoners from Central Jail, Tihar, he reached at Tis Hazari Judicial Lock-up at 9.20 A.M. Thereafter, the applicant without obtaining permission of the competent authority left the place. He was found lying near Uttam Nagar Terminal unconscious by the staff of PS Uttam Nagar. His



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personal search revealed that he was having Rs.10,000/-, a service pistol with 12 live cartridges and passbook of State Bank of India. He was medically examined. Doctor opined 'smell of alcohol in breath present'.

6. It is in this backdrop that the inquiry was conducted and the applicant was dismissed.

7. The learned counsel for the applicant, at the outset, contended that the summary of allegations and the charge clearly show that it is a pre-determined mind and, therefore, fair inquiry could not be held. He particularly referred to the summary of allegations wherein it has been asserted that the above said act, to which we have referred to above, amounts to gross misconduct, negligence, carelessness and indiscipline and thus he is liable for disciplinary action. However, the contention has to be rejected because the summary of allegation starts with the assertion that "It is alleged against you". It is on the basis of such allegations that the above said fact has been mentioned that it amounts to misconduct. Necessarily it implies that if it is proved, it would be misconduct. Even in the charge, it was pointed that it was alleged by the Additional Officer-Incharge of the Police Station, Uttam Nagar that the applicant was found under the influence of liquor, lying unconscious at Uttam Nagar Bus Terminal and it was thereafter mentioned that the above said act amounts to grave misconduct. It cannot, in these circumstances, be taken that there is a pre-determined mind in this regard.

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8. The learned counsel for the applicant took pains and took us to the past history pertaining to the sickness of the applicant. But in our considered opinion, it is totally irrelevant. The fact of the matter, which is the part of the charge, is that the applicant was detailed as In-charge Gaddi Guard Female Jail Van and he was found under the influence of the liquor, lying unconscious at Uttam Nagar Bus Terminal and his personal search revealed that he was having Rs.10,000/- and a service pistol with 12 live rounds, etc. Therefore, the present controversy pertains to the charge that had been framed because even if the applicant had any past history of sickness, it has to be remembered that he was detailed as In-charge Gaddi Guard Female Jail Van at Tis Hazari Court while he was found drunken, lying unconscious at Uttam Nagar Bus Terminal. This plea resultantly must fail.

9. Another submission made was that there was no alcohol found in the report of the FSL and, therefore, the charge must fail. This contention must fail because this Tribunal does not sit as a Court of appeal. In disciplinary proceedings, the charge is not to be proved beyond all reasonable doubts. The other evidence on the record clearly reveals that the fact was proved and, therefore, the inquiry officer was justified in acting upon the said evidence.

10. PW-9, Additional Officer In-charge, Police Station Uttam Nagar made the following statement:

**P.W.-9** Statement of Sh. R.Ramchander, Addl. S.H.O./Uttam Nagar Delhi. Stated that he has been working as a Addl. SHO since 25.06.02. On 05.10.02 HC Parkash Chand, No.7102/DAP (PIS No.28770011) of VI Bn. DAP



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on duty with III Bn. DAP was found lying unconscious at Uttam Nagar Terminal at about 1.30 PM and he was brought at the PS and detained. He with the help of his staff tried their maximum best/sincere efforts to cure him (HC) to bring him in conscious but all in vain because HC was badly drunken. A 9mm pistol with 12 alive rounds, Rs.10,000/- and a Bank Pass Book were kept safe from his (HC) possession and informed to Control Room West Distt. for informing the concerned unit. After this HC Bhagwati Prasad No.7114/DAP (PIS No.28810572) Id. No.65227 along with HC Parkash Chand to HC Bhagwati Prasad. He had written a DD No.32A dated 05.10.02 PS Uttam Nagar, a detailed report, copy of the same is in your file which you exhibit the same as PW-9/A as well as you have seen the same in original daily diary. HC Parkash Chand, No.7102/DAP was in uniform, lying unconscious in a badly drunken state. His act was very bad and damaged the image of Delhi Police. Opportunity given, cross nil by the defaulter."

11. It has to be remembered that he was not cross-examined. Thus facts stated by him that the applicant was badly drunken, is established from the evidence on the record.

12. A feeble attempt even was made to contend that Doctor, who has examined the applicant, has not been produced as witness. The doctor had misbehaved with the applicant. Only his signatures proved because it was explained to us that Doctor was not traceable. In that view of the matter, it cannot be taken that the fact was established on the statement of the concerned doctor. But we hasten to add that it was proved on the basis of other evidence on the record.

13. Yet another plea raised was that the applicant was not granted opportunity to produce defence witness. According to the learned counsel, the applicant had given the names of the

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Constable (Driver) Jagdish and Smt. Usha Sharma (wife of the applicant) to be produced as defence witness and that the request had been turned down. But there was no written request that has been made. The record thus supports the plea. It is too late in the day to float the said argument. For the first time when appeal was filed against the order of dismissal, it was rightly pointed by the respondents that it was an afterthought.


14. The applicant in fact is inconsistent in this regard. Earlier he had made a statement that he had taken medicines and was advised light duties. The fact of the matter is that it is not established that he had taken permission to leave the Tis Hazari Court and was found more than 20 Kms. away at Uttam Nagar. In fact, it shows the dereliction of duty and negligence to which he has been charged.

15. The last submission made was that the penalty awarded is excessive. The settled principle is that this Tribunal will only interfere if it shocks the conscience of the Tribunal. In a disciplined force, such act indeed should be taken seriously and consequently when such an act has happened in the police force, we feel no reason to interfere.

16. For these reasons, the OA being without merit must fail and is dismissed.

  
(S.A. Singh)  
Member (A)

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(V.S. Aggarwal)  
Chairman