

1 (2) 6

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.1696/2004

New Delhi this the 4th day of January, 2005

**Hon'ble Shri V.K. Majotra, Vice Chairman (A).
Hon'ble Smt. Meera Chhibber, Member (J).**

Partap Chand Tanwar,
S/o Shri B.R. Tanwar,
R/o 53, Tatar Pur,
New Delhi. Applicant.

(By Advocate Shri L.R. Khatana)

Versus

1. Govt. of NCT of Delhi,
(through Lt. Governor),
Raj Niwas Marg,
Delhi-110054.
2. Commissioner of Police, Delhi
Delhi Police Headquarters,
MSO Building, Indraprastha Estate,
New Delhi.
3. Joint Commissioner of Police (Southern Range),
Delhi Police Headquarters,
MSO Building, Indraprastha Estate,
New Delhi. Respondents.

(By Advocate Shri Ashwani Bhardwaj, proxy counsel for Shri Rajan Sharma)

O R D E R (ORAL)

Hon'ble Smt. Meera Chhibber, Member (J).

By this O.A., the applicant has challenged the disciplinary authority's order dated 19.6.2003 whereby he was given penalty of forfeiture of one year approved service temporarily for a period of two years. The suspension period was also treated as not spent on duty for all intents and purposes. He has also challenged the order dated 22.01.2004

(2)



whereby the punishment has been confirmed by the appellate authority. The applicant was given a charge-sheet on the allegations:

“On receipt of a complaint regarding sale of illicit liquor, Ganja and Bhang etc. Shri Virender Singh, Addl. DCP/South West District made an incognito visit in the area of Police Station Inderpuri on 18.05.2001 at about 6.00 PM and remained in the area till 8.00 PM. He was accompanied by respectable of Inderpuri area namely Sh. Avneesh Tyagi, Sh. Som Prakash Jhun-Jhun Wala, Sh. Mujib Rehman and Sh. Prem Kumar. A round of B and D Block of J.J. Colony, Inderpuri was taken by them in a private car. Rampant sale of illicit liquor and drugs in the area was seen. On both sides of the road of B and D Block, there are lanes and bye-lanes consisting of small houses. Persons who accompanied came down from the car on 6-7 points, went inside the lanes and purchased quarters, halves and bottles of IMEL of different brands. Then, Addl. DCP-I/South West District himself went into 3-4 lanes. He purchased IMEL and to his surprise, he found people selling liquor on cots. On request for more liquor, one person asked him to wait for half an hour and he can arrange 50-60 cartons on IMFL. There is hardly any area in the locality where liquor is not sold. As per the information given by the respectable of the area and on his objective assessment, there are more than 200 stalls/houses, where this illegal trade is going on. He also went along with the persons and purchased one Puria of Bhang and one Puria Smack by paying Rs.50/- . During the peak hours around 7/7.30 PM these places are flooded with people who come to purchase illicit liquor and narcotics substances from the area and most them consumed it there only. To his utter surprise, he could see 3 Beat Constables moving in that area also during that time. People of locality went to extent of saying that lower staff of police station is only a mute spectator and are not stopping these activities because of fear of SHO.

Instructions have been issued in this regard vide which it was stressed that recovery of liquor by any agency other than by the local police station will lead to presumption that such activities are going on with the active connivance of local police and SHO will be held squarely responsible. But despite, issue of these instruction, such activities were going on with the active connivance of beat/division staff as well as SHO. Otherwise, it is not possible that such activities can go on uninterruptedly to this extent. Thus, the beat/division staff and SHO have failed to stop sale of such illegal liquor etc. being run in their jurisdiction. SHO have failed to take effective checking and detecting of the personnel engaged in sale of illegal liquor etc. in the area of his police station.

The above act on the part of Insp. Pratap Chand Tanwar, No. D-1/451, the then SHO/Inderpuri, SI Puran Chand, No. D-244, SI Jaggu Ram, No. D-1974, HC Ramesh, NO. 288/SW, HC Balwant Singh, No. 343/SW, HC Lal Chand, No. 486/SW, HC Raj Kumar, 434/SW, Const. Krishan Pal, NO. 800/SW, Const. Bindeshwari, No. 689/SW, Const. Naresh Kumar, No. 501/SW,



Const. Vijayan, No. 1582/SW, Const. Sanjay, No. 949/SW, Const. Jogender, No. 739/SW, Const. Dharmender, No. 1333/SW, Const. Jai Beer, No. 1537/SW, Const. Suresh No. 1041/SW and Const. Sudesh, No. 1601/SW amounts to grave misconduct, carelessness, negligence and unbecoming of a police officers in the discharge of their official duties, which renders them liable to be dealt with departmentally, under the provision of Delhi Police (Punishment & Appeal) Rules, 1980”.

Applicant denied the above allegations and an inquiry was held. The Inquiry Officer gave his report as follows:

“The ingredient of the charge that PW-7 purchased one quarter of liquor from B block has been corroborated by PW-3. This area falls in division No. 3 whose incharge at that time was SI Puran Chand, No. D-244 and the beat staff included HC Ramesh Chand, No. 288/SW, Ct Sanjay, No. 949/SW and Ct Vijayan No. 1582/SW and hence this part of charge against the above said defaulters has been proved.

The charge that there was rampant sale of such substances with active connivance with beat and division staff has not been proved due to the facts mentioned below:- There has been no evidence documentary or otherwise except deposition of PW-7 to prove this charge. Secondly the comparative figures of cases under Excise Act produced by DW-12 and preventive and deterrent action by Insp. P.C. Tanwar through externement proposals – action under NSA also defend them. Thirdly the issue has not been raised by Sh. Puran chand Yogi, the local MLA Sh. S.K. Tiwari ACP/Vasant Vihar who conducted Ist six monthly inspection of 2000, has observed ‘the detection under Excise Act is very good’. Insp. P.C. Tanwar also got transferred Ct. Sanjay No. 1038/SW from PS Inderpuri after he was found indulging in illicit trade of liquor with local ‘Sansis’. Thus the connivance of local police in sale of illicit liquor and narcotic substances has not been proved.

CONCLUSION:

The charge against SI Puran Chand, No. D-244, HC Ramesh Chand, No. 288/SW, Ct. Sanjay, No. 949/SW and Ct. Vijayan, No. 1582/SW that they failed to prevent sale of illicit liquor in their area has been substantiated.

“The charge against Insp. P.C. Tanwar, No. D-1/451 that he failed to exercise to supervision effectively in preventing illegal sale of liquor and narcotic substances in the area of the P.S. has also been substantiated. However, the charge against rest of the defaulters has not been proved”.

2. Applicant has challenged these orders on the grounds that, (1) none of the independent witnesses supported the allegations of sale of illicit liquor as made out by the

Addl. Deputy Commissioner of Police. It is thus a case of no evidence or the findings can be stated to be perverse in nature. Therefore, these orders are liable to be quashed and set aside. (2) Applicant has further submitted that neither any seizure was made nor any Panchnama was made nor signatures were taken from the independent witnesses, who were stated to be respectable persons of the locality and were alleged to have accompanied the Addl. Deputy Commissioner of Police. (3) The Additional Deputy Commissioner of Police did not even take any follow up raids or made any recoveries from Inderpuri which itself shows that the whole story is cooked up to implicate him.

3. We have heard both the counsel and perused the pleadings as well.
4. Counsel for the respondents submitted that since the entire allegations levelled against the applicant could not be proved and only a part of it is proved, therefore, he has been given comparatively a lesser punishment, which is in accordance with the rules and it calls for no interference. He has also submitted that in disciplinary cases, Courts cannot re-appreciate the evidence and what punishment is to be given to the delinquent officer is to be left open to the parties concerned. He, therefore, prayed that the O.A. may be dismissed.
5. We are fully aware about the judgments given by the Hon'ble Supreme Court that Tribunal cannot re-appreciate the evidence but that does not preclude us from looking into the evidence to find out whether there was any material on record to substantiate the allegations or the findings are perverse in nature. Therefore, when we looked into the findings submitted by the Inquiry Officer and saw the various statements made by the prosecution witnesses, it was found that even though the Addl. Deputy Commissioner of Police had stated that some respectable persons of the area had accompanied him on his visit to Inderpuri on 18.05.2001 and they took round along with him of the area and found rampant sale of illicit liquor, smack, ganja and bhang, etc. in almost the entire locality and stated that there were as many as 200 stalls where illicit liquor was being sold but yet none of the independent witnesses, who were named by the Department as prosecution



witnesses, has supported the claim of the said Addl. Deputy Commissioner of Police. On the contrary, some of the prosecution witnesses have stated that they had neither gone to the office of the Addl. Deputy Commissioner of Police on the dates as stated by the Addl. Deputy Commissioner of Police nor had accompanied him on 18.05.2001 during his so-called raid in Inderpuri. There is only one witness, namely, PW-3 who has stated that the Addl. Deputy Commissioner of Police had bought one quarter of liquor from B Block but he was also not in a position to say the source from where the said quarter was purchased as he stated in the cross-examination that he had not accompanied the Addl. Deputy Commissioner of Police when he had gone to purchase the said liquor. The question, therefore, ^{that is} comes up for consideration is, whether in these circumstances, can it be said that the SHO of the area failed to supervise or check sale of illicit liquor, ganja, smack and bhang, etc? The statement made by the Addl. Deputy Commissioner of Police himself does not inspire confidence as he has stated that he purchased a Puria of smack but neither sent it for chemical examination nor did he order for summoning more police force in case he had gone to check on an unofficial raid even though admittedly he had mobile phone, wireless set and other facilities available to him. He states that he threw away the Puria of smack which is totally beyond comprehension. After all, if there was such rampant sale of illicit liquor going on in the area and he himself states that he had seen the beat constables roaming around in the same area without checking the same, the least that was expected of him was to at least take the names of those beat constables but surprisingly he did not even bother to take the names of those beat constables. He did not even know the exact address from where he purchased the liquor. He did not try to take any signatures from any independent witness even though as per his own statement, some respectable persons had accompanied him on his said visit.

6. Apart from all these facts, we cannot lose sight of the fact that on the contrary applicant had produced a number of defence witnesses which included the Secretary of Residents Welfare Association (Regd.) of the area, who had stated that there is no liquor



11

shop in the premises and no liquor, ganja, bhang, charas or smack, etc. were sold. Similar statements were made by the Pradhan of Avas Kalayan Samiti which consisted of about 240 quarters belonging to Pusa Institute as well as Secretary of Avas Vikas Kalyan Samiti consisting of about 160 quarters belonging to Pusa Institute and few other residents. They had, in fact, all stated that Inspector Partap Chand Tanwar was all the time patrolling in the area along with beat and division staff and whosoever was found selling illicit liquor or committing a crime used to be lodged in lock up.

7. The most astonishing thing which we found was that the Addl. Deputy Commissioner of Police did not want to divulge the contents of complaint by stating that complaint had been originated from a senior officer. We do not see any reason why so much of secrecy should be maintained about the contents of a complaint because after all if it is a genuine complaint, at best it would have narrated the facts as to how illicit liquor, ganja, bhang or smack, etc. was being sold in the area. Therefore, the way the Addl. Deputy Commissioner of Police has conducted this raid and since no concrete evidence in support of the allegations as made by him, has come on record, we are convinced that the findings can easily be termed as perverse. Interestingly, the Inquiry Officer himself states that connivance of the local police in the sale of illicit liquor and narcotic substances has not been proved. If connivance of local police in sale of illicit liquor and narcotic substances has not been proved and the only piece of evidence which is on record is that the Addl. Deputy Commissioner of Police had bought a quarter of liquor without explaining as to from which house or stall or the exact place the said quarter was purchased, it can hardly be said that the SHO failed to exercise supervision in preventing illegal sale of liquor and narcotic substances in the area of Inderpuri Police Station. The foremost thing which has to be proved in the inquiry was that illegal sale of liquor and narcotic substances were taking place in Inderpuri but since that aspect has not been proved in the inquiry, we are satisfied that the findings of the Inquiry Officer, the penalty order and the appellate order imposed on the basis of said findings cannot be sustained in



law. Accordingly, the findings of the Inquiry Officer and the orders of the disciplinary authority and the appellate authority are quashed and set aside. O.A. is allowed. No order as to costs.


(MEERA CHHIBBER)
MEMBER (J)

/SRD/


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

4.1.05