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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.324/2004

New Delhi, this the 26th day of October, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Const. Sombir Singh
S/o Niyadar Singh
R/o Vill. & P.O. Sauhra
Tehsil Jhajjar
Distt. Jhajjar, Haryana.

... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Govt. of NCT of Delhi
Through its Commissioner of Police
I.P.Estate, ITO, New Delhi.
2. Dy. Commissioner of Police
Police Control Room
Delhi.
3. Add. Commissioner of Police
PCR and Communication
Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicant is a Constable in Delhi Police. He seeks to assail the order passed by the disciplinary authority dated 25.6.2003 whereby a penalty of forfeiture of 8 years approved service has been imposed on the applicant and his pay has been reduced by 8 stages from



Rs.3650/- to Rs.3050/- and his suspension period from 10.8.2000 to 19.2.2001 is decided as period not spent on duty.

2. The applicant preferred an appeal. It has been dismissed as not maintainable.

3. At the outset, we deem it necessary to mention that the learned counsel for the applicant did not press the contention pertaining to the fact that the Commissioner of Police had concluded that the appeal was not maintainable.

4. The departmental proceedings were initiated against the applicant and ASI Surjeet Singh on the allegations that on 31.7.2000 while posted in South West Zone and performing duty at PCR Van Zebra-97, they intercepted one Maruti Car No.DL-6C-F-4122 at 3.25 P.M. at Chhawla Stand, Najafgarh. It was loaded with 15 bags containing 3000 pouches of illicit country made liquor. The driver of the said car told to ASI Surjeet Singh and the applicant that there is one tempo TATA-407 full of liquor which can be intercepted near village Paprawat, Najaf Garh. ASI Surjeet Singh had sat in the car and left for Paprawat. After reaching near Paprawat, the driver of the car suddenly stopped the said car, opened the window of the driver side and escaped in the fields. Later, the said car (without driver) along with 15 bags of illegal pouches was handed over to SI J.K. Bhardwaj of PS Najafgarh, Delhi.

[Signature]

It was asserted that the applicant and the ASI Surjit Singh were negligent.

5. The inquiry officer in this regard had framed the following charge:

"I, R.C.Thakur, Asstt. Commissioner of Police, East Zone PCR, Delhi, hereby charge you ASI, Surjit Singh No.120/D and Const. (Dvr). Somveer Singh No.2959/PCR that on 31.7.2000 while posted in South West Zone PCR, and performing duty at PCR Van Zobra-97, you intercepted one Maruti Car No.DL-6C-F 4122 at 3.25 PM at Chawla Stand, Najaf Garh which was found loaded with 15 bags containing 3000 pouches of illegal country made liquor. The driver of the said car told you ASI. Surjit Singh No.120/D and Const. (Dvr). Somveer Singh No.2959/PCR that there is one Tempo Tata-407 full of liquor which can be inter-cepted near village paprawat, Najafgarh. You ASI. Surjit Singh No.120/D sat in the car which was being driven by its driver and left for Paprawat. The PCR Van-Zobra-97 followed the car upto Paprawat. Just after reaching near Paprawat, the driver of the car suddenly stopped the said car, and opened the driver side window and escaped in the fields. Later the said car (without driver) alongwith 15 bags of illegal pouches were handed over to SI. J.K.Bhardwaj of PS. Nazafgarh, Delhi by you ASI. Surjit Singh No.120/D and Const. (Dvr). Somveer Singh No.2959/PCR. There is negligence on the part of you ASI. Surjeet Singh No.120/D and Const. (Dvr). Sombeer Singh No.2959/PCR due to which the driver of the said car could easily escaped at the spot.

The above act on your part amounts to gross misconduct negligence, dereliction to

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duty and unbecoming a member of disciplined force for which you are liable u/s 21 Delhi Police (Punishment & Appeal) Rules-1980."

6. It is thereafter that the disciplinary authority had imposed the penalty. Earlier this Tribunal had remitted back the matter to the disciplinary authority and thereupon the fresh order referred to above has been passed.

7. Needless to state that in the reply, the application is being opposed.

8. We have heard the parties' counsel and have seen the relevant record.

9. Learned counsel for the applicant, in the first instance, argued that in the present case Sub-Rule (2) to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 has been violated as the disciplinary proceedings have been started without the prior approval of the Additional Commissioner of Police.

10. To appreciate the said controversy, we reproduce Sub-Rule(2) to Rule 15 of the Rules which reads as under:

"(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

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11. A bare reading of the above would show that one of the necessary ingredients is that preliminary inquiry should disclose the commission of cognizable offence. In the present case bare allegations to which we have made a reference above indicate that findings are that as a result of negligence, a person had escaped by giving slip to the applicant and another. Therefore, the necessary ingredient referred to above is not satisfied. The said plea of the learned counsel, therefore, must fail.

12. In that event, it has been contended that there is no connivance that has been established and, therefore, the charge is not proved. On this count, we have least hesitation in rejecting the said argument. It is true that the inquiry officer has referred to the fact that there is a doubt about the connivance of PCR Van staff with respect to the absconding of said person but this incidental reference is of little consequence because the charge is of negligence of duty and even the disciplinary authority had penalized the applicant for negligence of duty rather than for connivance with the said person. Even this plea, therefore, is repelled.

13. The main argument advanced was that there was no evidence against the applicant about his negligence. The learned counsel argued that the person who conducted preliminary inquiry could not establish the charge and the persons who were examined in the preliminary inquiry have not been examined during the

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departmental inquiry. There is no other material, even on preponderance of probabilities, against the applicant. As against this, learned counsel for the respondents contended that on preponderance of probabilities such finding could be arrived at. The applicant had adopted the defense of the co-delinquent. The other person could not have escaped without the negligence of the applicant and the ASI of Police.

14. At this stage, we take note of the well settled principle referred to in the decision of the Supreme Court **KUMAON MANDAL VIKAS NIGAM LTD. v. GIRJA SHANKAR PANT AND OTHERS**, (2001) 1 SCC 182. The Supreme Court reiterated the well settled principle that in departmental proceedings, the interference of the Court would be called for only if there is no evidence or findings are totally perverse or legally untenable. In Paragraph 19, the Supreme Court held:

✓ "19. While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceedings cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial

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conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of *Apparel Export Promotion Council v. A.K.Chopra* [(1999) 1 SCC 759]."

15. Perusal of the report of the inquiry officer indicates that the applicant was detailed for driver duty in the PCR Van. This was due to shortage of Driver. W/Head Constable Torseema Thomas, PW-2 has simply stated that ASI Surjeet Singh had informed her that he had stopped one Maruti Car of white colour containing liquor and driver of the vehicle has fled away leaving behind the car. Even this statement does not indicate any role of the applicant in the alleged negligence. Almost similar is the statement of ASI Beer Singh, PW-3, which also does not indicate any role of the applicant.

16. The department strongly relied upon the statement of Gurmukh Singh, PW-4. Shri Gurmukh Singh had examined certain persons and conducted a preliminary inquiry. But it has rightly been pointed on behalf of the applicant that those persons who were examined by Shri Gurmukh Singh during the preliminary inquiry have not again been examined before the inquiry officer. Necessarily the departmental case has to stand on its own legs. The applicant should get a chance to cross-examine those persons. If an inquiry has been held wherein the applicant has not been given a

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chance to cross-examine, in that event, unless there are other cogent circumstances, it will be difficult to read their statements.

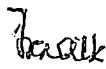
17. The sequence of events clearly indicate that the applicant was the Driver of the PCR Van. He was with ASI Surjeet Singh. They intercepted one Maruti Car which was loaded with 15 bags containing 3000 pouches of illegal country made liquor. The driver of that Maruti Car had told them that there is one tempo full of liquor which can be intercepted. There upon ASI Surjit Singh sat with him in the car. The applicant was following that car. After some time, the driver escaped after stopping the car.


18. Subject to the version of the ASI regarding which we do not intend to give a finding, it would be sufficient to state that it was ASI Surjeet Singh who was sitting with the said person in another vehicle from whom liquor was recovered. The negligence would be of ASI Surjeet Singh. The applicant was simply following them in his PCR Van. The charge framed was that there was negligence of the applicant and ASI Surjeet Singh whereby the driver of the other vehicle managed to escape. We fail to understand in the absence of any other material on the record as to how the applicant can be attributed any negligence when as per the record and the charge, he was simply following the Maruti Car driven by the other person. The said vehicle was ahead of PCR Van of the applicant. Thus, negligence in this backdrop cannot be attributed to the applicant.

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19. It is true that on preponderance of probabilities, in disciplinary proceedings certain findings can be arrived at but those findings cannot be totally on surmises and conjectures as in the present case.

20. Resultantly, for these reasons, we allow the present application and quash the impugned orders. The applicant should be awarded the consequential benefits.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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