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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.937/2004

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New Delhi, this the 1 day of May, 2005

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

Ex. Insp. Rai Singh Dabas
No.D-I/35
S/o Late Sh. Dheer Singh
R/o RZ-108, Lokesh Park
Nazafgarh
Delhi - 43.

... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police
PHQ, I.P.Estate
New Delhi.
3. Addl. Commissioner of Police
PCR & Communication
New Delhi.

.. Respondents

**(By Advocate: Sh. Harvir Singh, proxy counsel of Ms.
P.K.Gupta)**

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant joined Border Security Force as Constable in January 1970. He was absorbed in Delhi Police in 1986, while he was working as Sub-Inspector. He was promoted as Inspector in October 1987.



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2. By virtue of the present application, he seeks to assail the order passed by the disciplinary authority whereby penalty of removal from service has been imposed upon him. His appeal filed before the Commissioner of Police has been dismissed on 24.7.2003.

3. The facts that prompted the applicant to file the present application are that he had been served with summary of allegations which were by and large on the same lines the charge was framed. It reads:

"CHARGE"

I, Dr. P.S. Bhushan, the Enquiry Officer, hereby charge you, Insprt. (Min.) Rai Singh Dabas, No.D-I/35 (under suspension) (PIS No.28860003) that on 01.08.2001 at 1.34 a.m. an information was received at Police Control Room that one Inspr. has been beating Constables at Narain Dharam Kanta, Najafgarh Road, near Nilothi Morh. In response to the call, PCR Van P-65 reached the spot. SI Singhasan Singh (T-29), SI Rajbir Singh, I/C P.P. Nihal Vihar and SHO/P.S. Nagloi also reached the spot and found you, Inspr. Rai Singh Dabas, No.D-I/35 as well as Const. Bal Kishan No.1842/PCR and Const. Dheer Singh No.3351/PCR alongwith the Govt. Motor Cycle No.DL-IS-L-9079, blue clour. On the spot, you were found quarreling with the Consts. Bal Kishan No.1842/PCR and Dheer Singh No.3351/PCR. As per direction of SHO/P.S. Nagloi, SI Rajbir Singh, I/C P.P. Nihal Vihar took you and both the Constables in PCR Van P-65 to Sanjay Gandhi Memorial Hospital for medical examination. You, Inspr. R. S. Dabas were medically examined and the Doctor opined "smell of alcohol present", and you refused to put thumb impression on M.L.C. No.D/20. The Doctor opined no fresh injury to Const. Dheer Singh. Const. Bal Kishan was referred for E.N.T. opinion. Shri S.R. Meena, ACP/West Zone/PCR also conducted a preliminary inquiry, which

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revealed that you, Inspr. Rai Singh Dabas alongwith rider Const. Dheer Singh reached at Yadav Sweet Corner, Rampura crossing on Govt., Motor Cycle No.DL-1S-L-9079 after closing the office. You, Inspr. Rai Singh Dabas had consumed liquor at Yadav Sweet Corner, Rampura crossing. You had also sent Const. Bal Kishan for your private work at Dharu Hera during daytime in connection with seized engine of your private Bus No.DL-1P-A-2301. At about 10 p.m., Const. Bal Kishan informed you from Dhaula Kuan on mobile phone No.9810101457 about the progress of the work of your private bus. You, Inspr. Rai Singh Dabas had given direction to Const. Bal Kishan to report at Yadav Sweet Corner, Ram Pura crossing, Rohtak Road. After that you alongwith both the Constables left for your residence in Najafgarh on the said Govt. Motor Cycle. On the way near Nilothi Morh, Rishal Garden, you, Inspr. Rai Singh Dabas all of a sudden, started quarreling and beating both the Constables under the influence of liquor. Both the Constables had reported the matter to Police Control Room on Telephone No.100 from nearby Narain Dharam Kanta, but they did not disclose their names. For this misconduct, you, Inspr. Rai Singh Dabas were placed under suspension vide office order No.1318-48/P.Sec. Addl. CP/P&C, dated 01.08.2001.

The above act on the part of you, Inspr. Rai Singh Dabas, No.D-I/35 amounts to gross misconduct and misuse of official power & machinery, which renders you liable for punishment under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980"

4. The inquiry officer had been appointed. The Additional Deputy Commissioner of Police, Dr. P.S.Bhushan on 15.5.2002, after recording of evidence, concluded that the charge against the applicant stood proved. It is after consideration of the said findings that the impugned order to which we have referred to above had been passed.

5. The application has been contested.

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6. Respondents plead that departmental inquiry was ordered against the applicant on the allegations that on 1.8.2001 at 1.34 A.M., an information was received at Police Control Room that one Inspector was beating the Constables at Narain Dharam Kanta, Najafgarh Road, Near Nilothi More. On this information, Police Control Room Van reached the spot. Sub-Inspector Singhasan Singh, Sub-Inspector Rajbir Singh, Office-Incharge of Police Station Nagloi also reached the spot and found the applicant along with Constable Bal Kishan, Constable Dheer Singh and a Motor Cycle blue colour on the spot where they were found quarreling with each other. On the directions of SHO, PS Nangloi, the Officer-Incharge of the PCR Van took them to Sanjay Gandhi Memorial Hospital for medical examination. The applicant was examined and the doctor opined that "Smell of Alcohol present" but the applicant refused to put thumb impression on M.L.C. The doctor opined no fresh injury to Constable Dheer Singh and Constable Bal Kishan was referred to ENT for opinion. Shri S.R.Meena, ACP had conducted an inquiry which revealed that applicant alongwith rider Constable Dheer Singh reached Yadav Sweet Corner, Ram Pura Crossing and there the applicant had consumed liquor. The applicant had also sent Constable Bal Kishan for his private work at Dharu Hera. At about 10.00 P.M, Constable Bal Kishan informed the applicant from Dhaula Kuan about the progress of the work of his private bus. The applicant gave directions to Constable Bal Kishan to report to Yadav Sweet Corner. After that all the three left for Najafgarh. On the way near Nilothi More,

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Rishal Garden, the applicant quarreled with both the Constables and physically beaten them under the influence of liquor. They reported the matter to the Police Control Room.

7. It is on these basic facts that the above said inquiry had been conducted.

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

9. The first and foremost argument advanced was that in the charge as well as in the summary of allegations, there was a mention that Sh. S.R.Meena, ACP had also conducted a preliminary inquiry which revealed that "You, Inspr. Rai Singh Dabas alongwith rider Constable Dheer Singh reached at Yadav Sweet Corner", where, the applicant had consumed liquor" and the other facts to which we have referred to above.

10. According to the learned counsel, the preliminary inquiry could not be used in the charge and that this violates Sub-Rule (3) to Rule 15 and Sub-Rule (3) to Rule 16 of Delhi Police (Punishment & Appeal) Rules, 1980.

11. We take liberty in reproducing both the relevant rules to appreciate the said argument:

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary

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after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

"Rule 16.(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

12. As per the above quoted provisions of Delhi Police (Punishment & Appeal) Rules, 1980, particularly Sub-Rule (3) to Rule 15 clearly shows that the file of preliminary inquiry shall not form part of the formal departmental record but the statements therefrom could be brought on record of the departmental proceedings when the witnesses are no longer available. Similarly in Sub-Rule (iii) to Rule 16, the witnesses have to be examined during the inquiry directly in the presence of the delinquent. The

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inquiry officer is however, empowered to bring on record the earlier statement of any witness when in his opinion, his presence cannot be procured without any undue delay, inconvenience, etc. In the present case, the file of the inquiry officer is not forming part of the departmental proceedings. It has simply been mentioned that the preliminary inquiry had been held. In such an event, neither the Sub-Rule (3) to Rule 15 nor Sub-Rule (iii) to Rule 16 are violated. The plea, therefore, must fail.

13. Another limb of the argument was that Dr. P.S. Bhushan who claims himself as Deputy Commissioner of Police could not be the inquiry officer. The learned counsel contended that in accordance with the instructions, he could not be so. We had permitted the applicant to produce any such rule or standing order. But no such standing order has been brought to our notice. We find no reason as to why the Additional Deputy Commissioner of Police, who is more senior to the applicant in the hierarchy, could not be the inquiry officer when no prejudice has been caused.

14. However, it was urged that certain documents have been taken on the record which were not listed in the list of documents and, therefore, the inquiry is vitiated. Whenever such an argument is raised, which is procedural in nature. It has to be examined on the touch-stone as to if any prejudice is caused or not.

15. Our attention has not been drawn to any objection having been raised at the relevant time.

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16. Be that as it may, when the evidence is produced and right is given to cross-examine and thereafter to produce the defence, on that score, it cannot be stated that any prejudice has been caused to the applicant. Consequently, it is difficult to accept the said contention.

17. Another limb of the argument was that Sub-Rule (2) to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 even has been violated. The said rule unfolds itself in the following words:

(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.

18. The above said Rule clearly shows that the preliminary inquiry should disclose the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, In that event, before the departmental inquiry, prior approval of the Additional Commissioner of Police concerned is necessary as to if a criminal case should be registered and investigated or a departmental inquiry should be held.

19. The findings of Sub-Rule (2) to Rule 15 is that a seniormost officer must apply its mind as to if the departmental inquiry should be ordered or not, particularly when the preliminary

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inquiry discloses a cognizable offence by a police officer of subordinate rank in his official relations with the public.

20. In the present case, the necessary ingredient that it should pertain to his official relations with the public is missing. We have already given the brief resume of the controversy. It shows clearly and without any pale of controversy that dispute was between the Constable and the applicant. Therefore, it has nothing to do with his official relations with public. The contentions so much thought of necessarily must fail.

21. At this stage, it is worthwhile to note that in judicial review of the departmental proceedings and the penalties, the scope for interference is limited. This Tribunal would only be competent to interfere, if the findings are totally erroneous which no reasonable person can arrive at. This Tribunal will not sit as a Court of appeal and re-appreciate the evidence. Departmental inquiries are basically to maintain discipline in the department.

22. We refer with advantage to the decision of the Supreme Court in the case of **B.C.CHATURVEDI v. UNION OF INDIA AND ORS.**, JT 1995(8) SC 65. It had gone into this controversy and held that the disciplinary authority is the sole judge of facts. The Tribunal would only interfere where conclusions or findings arrived at are totally based on no evidence. The findings of the Supreme Court in this regard are:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that

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the conclusion which the authority reaches necessarily correct in the eyes of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

23. It is in this backdrop that the other submissions can be considered.

24. The applicant contended that the MLC that was produced was not in his name but the name mentioned was of Raj Singh. The name of the applicant is Rai Singh. Though the copy of the MLC was not brought to our notice but the evidence on the

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record particularly of SI Singhasan Singh, Constable Dheer Singh and Constable Bal Kishan clearly reveals that it was the applicant who had quarreled and he was sent for medical examination. Thus, slight mistake in recording of the name will not permit us to conclude and upset the findings on that score.

25. Yet another limb of the argument was that inquiry officer had threatened the defence witnesses and the learned counsel had drawn our attention to this plea that was raised in appeal before the Commissioner of Police.

26. We have least hesitation in rejecting even the said plea because this was not taken in the defence statement. It is clearly an afterthought with little basis to support the same.

27. The last submission, which was worthwhile and agitated, was that the applicant has been held guilty of misusing the Government machinery, which was not a part of the charge. Indeed, even on facts, it was not correct because in the charge which we have reproduced, it was specifically mentioned in the end that he had misused the official power and machinery.

28. Taking stock of the totality of the facts and circumstances, therefore, we find that pleas raised are without any substance.

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29. Keeping in view the nature of the dereliction of duty and more so in a disciplined force, the penalty imposed cannot be stated to be excessive.

30. Resultantly, the Original Application being without merit must fail and is dismissed.


(M.K. Misra)
Member (A)


(V.S. Aggarwal)
Chairman

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