

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2776/92

12

New Delhi this the 24th day of April, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Wazir Singh (1169/NE),
Ex-Constable

...Applicant

(By Advocate Shri Shyam Babu)


-VERSUS-

Delhi Administration, Delhi
through its Chief Secretary,
& Others

...Respondents

(By Advocate Shri Vijay Pandita)

1. To be referred to the Reporter or not? Yes
2. To be circulated to other Benches of the Tribunal? No


(Dr. A. Vedavalli)
Member (J)

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Wazir Singh (1169/NE),
Ex-Constable son of Shri Fateh Singh,
R/o Village Kilo, i,
P.S. Rohtak,
District Rohtak (Haryana).

...Applicant

(By Advocate Shri Shyam Babu)

-VERSUS-

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg, Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, I.P. Estate,
New Delhi-110002.
3. Addl. Commissioner of Police
(New Delhi Range),
Police Headquarters,
I.P. Estate,
New Delhi-110002.
4. Addl. Deputy Commissioner of Police,
North East District,
Delhi.

...Respondents

(By Advocate Shri Vijay Pandita)


O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant, an Ex-Constable in the Delhi Police is aggrieved by his dismissal from service. He has impugned (i) the disciplinary authority's order dated 27.6.91 (Annexure-I) imposing the said punishment, (ii) the order of the appellate authority dated 23.10.91 (Annexure-K) and (iii) the order of the revisionary authority dated 7.9.92 (Annexure-M).

2. As per the summary of allegations (Annexure-C), 1A briefly, the applicant Wazir Singh, a Constable in the Delhi Police and Limji Bhai, a Head Constable were on duty at Loni Check-Post from 8.00 p.m. to 8.00 a.m. on 25.5.90. At 21.30 hours they were found consuming liquor in the company of three public men by a Deputy Commissioner of Police and an Assistant Commissioner of Police who came there. S.H.O. Shahdara was called to the spot who took possession of one full bottle of beer 'Golden Eagle', 4 empty bottles of the same brand, one half filled jug of beer and 4 glasses full of beer which were deposited in the Malkhana. The applicant as well as Limji Bhai, Head Constable were placed under suspension and a joint departmental enquiry was ordered against them. According to the charge dated 7.3.91 (Annexure-D) framed against the applicant the aforesaid act amounts to grave misconduct on his part which renders him liable for departmental action under Section 21 of the Delhi Police Act, 1978. The defaulter applicant did not plead guilty to the charge levelled against him. He did not produce any defence witnesses and submitted his defence statement. The statements of several witnesses for the prosecution, including the three public men were recorded during the enquiry proceedings. Inter alia, the finding of the enquiry officer dated 8.5.91 (Annexure F) is as follows:

"It is true that no one had seen the defaulters actually drinking beer, but all the circumstances indicate that 3 public men who were known to the defaulters entered the police check post with five bottles of beer and all these five men were drinking beer. When senior officers reached the check post, already 4 bottles of beer had been emptied beer was there in 4 glasses and one Jug. Statements of PW-1, PW-2, PW-6, PW-7 and PW-8 corroborate this fact.



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Hence I Mukesh Chander ACP/Seelampur E.O. hold
Wazir Singh No.1169/NE and HC Limizi Bhai
No.229/NE, guilty of the charge that while there
were on duty at Loni Check Post on 25.5.90 they
were consuming beer in the company of 3 other
public men inside the Check-Post."

3. Copy of the said report was given to the defaulter applicant and he was given a personal hearing also by the disciplinary authority in OR. The disciplinary authority imposed the punishment of dismissal from service by the impugned order dated 27.6.91 (Annexure-I). The appeal filed by the applicant against the said order has been rejected by the appellate authority by his order dated 23.10.91 (Annexure-K). The revision petition filed by the applicant against the said appellate order was also rejected by the revisionary authority by the impugned order dated 7.9.92 (Annexure-M).

4. The applicant seeks quashing of the three impugned orders and his reinstatement in service from the date of the order of punishment with all consequential benefits.

5. The O.A. is contested by the respondents who have filed their counter. Rejoinder to the said counter has been filed by the applicant.

6. We have heard the learned counsel for the parties and have perused the pleadings, relevant papers and the material placed on record. The matter has been considered carefully.

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7. The applicant has raised several grounds in this OA in support of the reliefs sought by him. However, only certain main grounds have been pressed by the learned counsel for the applicant during hearing and the same will be dealt with presently. 16

8. The first ground urged by the learned counsel for the applicant Shri Shyam Babu is that the Deputy Commissioner of Police (DCP) North-East District was a prosecution witness in the departmental enquiry and the Additional DCP, North District is the punishing authority. Since the said punishing authority is working under DCP North East District it is against the principles of natural justice.

9. Learned counsel for the respondents Shri Vijay Pandita denied the said ground as being wrong. He submitted that the Additional DCP North East District is empowered to award any kind of major punishment to any police officer of subordinate rank under Section 21 of the Delhi Police Act, 1978 and, therefore, the punishment order dated 27.6.91 is valid as being within the competency of the said Additional DCP (respondent No.4).

10. On considering the rival contentions on the above ground, and on examination of the provisions of the aforesaid Section 21 of the Delhi Police Act, we are of the view that since the Additional DCP is competent to award the impugned punishment order, we are of the view that the mere fact that the DCP North East District was one of the prosecution witnesses will not by itself vitiate the impugned

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punishment order on the said ground in the facts and circumstances of this case since the applicant has failed to prove with supporting material as to how the punishing authority was prejudiced or biased against him. The aforesaid ground is, therefore, rejected, as untenable.

11. The second ground urged by the learned counsel for the applicant is that the enquiry officer relied upon the statement of the three public men given in the preliminary enquiry in the Police Station when the said witnesses deposed as PWs 3,4 and 5 in the departmental enquiry and hence there is a violation of Rule 15 (3) of the Delhi Police (Punishment and Appeal) Rules, 1980.

12. Re the above ground the learned counsel for the respondents submitted that though the statements were recorded during the preliminary enquiry the applicant was caught red handed and the aforesaid witnesses were cited as PWs 3,4 and 5 in the departmental enquiry. They deposed clearly that they were consuming liquor inside the check post and the empty bottles of beer, full bottle of beer and the four glasses etc. were recovered, the case against the applicant is sufficiently proved even without the aforesaid depositions and hence the said ground is without any merit.

13. On a perusal of the enquiry report dated 8.5.91 (Annexure F) we find that the said three public men gave their statements initially on the same day, i.e., on 25.5.90 when the defaulter applicant was found consuming liquor in their company. They were again examined as PWs 3,4 and 5 during the departmental enquiry on 31.7.90, i.e., after a gap of two

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months. PW-3 Ashok Kumar differed with his earlier statement and stated that he did not read the papers and was made to sign. The enquiry officer was of the view that the witnesses is a college student and it can hardly be believed that he cannot read the papers. It appears that the PWs 4 and 5 also stated similarly in their later statements to the enquiry officer who felt that since the said witnesses are the friends of the defaulter applicant they gave statements which are different from the earlier ones to save thier friend. But, ultimately, he gave his finding as extracted supra.

14. Rule 15 (3) of the aforesaid Rules provides, inter alia, that "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." However, in the present case the said three PWs were available during the departmental enquiry but they differed from their statements recorded during the preliminary enquiry and the enquiry officer, as noted earlier, placed reliance on the statements of PW-1, PW-2, PW-6, PW-7 and PW-8 only as corroborating evidence for his finding. In the circumstances, the aforesaid second ground, in our view is devoid of any merit and cannot be sustained. It is, therefore, rejected.

15. The third ground pressed by the learned counsel for the applicant is that since a joint enquiry was conducted against the defaulter applicant and the Head Constable Limji Bhai and a common finding was given by the enquiry officer, a lighter punishment should have been given to the applicant also and the penalty of dismissal from service is too harsh.

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16. Learned counsel for the respondents in reply contended that the gravity of the misconduct of the applicant is more severe as he is the real culprit who allowed his friends to consume beer inside the check post but also supplied glasses etc. for this purpose in spite of his being on duty and also forced Limji Bhai to join him to rope him into his misconduct and hence the punishment has been rightly imposed on the applicant.

17. We have considered the above ground anxiously. It is well settled that it is not for this Tribunal to go into the quantum of punishment imposed upon the defaulter in disciplinary proceedings or to direct that a particular penalty should be given to such a person, ordinarily. No exceptional or extraordinary circumstances or grounds which may require our interference have been brought to our notice in this OA. We are, therefore, of the view that the above ground also fails as being invalid.

18. The fourth ground emphasized during the hearing by the learned counsel for the applicant is that the defaulter has not committed an act of grave misconduct under Rule 8 (a) and Rule 10 of the aforesaid rules and hence the impugned orders are bad on that ground also.

19. In reply, it was argued by the learned counsel for the respondents that a regular departmental enquiry has been conducted as per the relevant rules and the charge

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against the applicant has been proved. He contended that the applicant hence was rightly awarded the punishment of dismissal from service for grave misconduct.

20. It is seen that the aforesaid Rule 8 (a) runs thus:-

"8. Principles for inflicting penalties--(a) Dismissal/Removal.--The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service."

21. Rule 10 of the said Rules is as follows:-

"10. Maintenance of discipline.--The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

22. While so, all the three impugned orders contain detailed reasons as to how the applicant's misconduct was considered to be 'grave'. Paragraphs 7, 8, 9 and 10 of the impugned orders of the disciplinary authority are relevant in particular in this regard. In view of the above position we find that the impugned orders are not vitiated by any violation of the aforesaid Rules. Therefore, this ground also fails.

23. The fifth and the last ground stressed by the learned counsel for the applicant is that no medical examination of the applicant was conducted to ascertain whether he has consumed any liquor at the time when he is alleged to have taken it on duty and hence the charge against the applicant cannot be sustained. He relies upon a decision

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of the Hon'ble Supreme Court in 1971 (3) SCC 930 and submitted that certain blood tests etc. should have been conducted before charging the applicant with the misconduct.

24. The respondents' reply in respect of the aforesaid ground is that the applicant was found consuming liquor alongwith the three public men inside the Loni check post while on duty by the DCP, North East District himself in the presence of A.C.P. Shahdard and S.H.O. Shahdara who has summoned from his possession the beer bottles full and empty four glasses etc. and since there was sufficient evidence to prove the charge there was no need to get a medical examination.

25. We have given our anxious consideration to this ground. The defaulter applicant himself has admitted in his written statement of defence (Annexure E) and reply to the memorandum dated 3.6.91 (Annexure H) and his appeal dated 4.7.91 (Annexure J) that the three public men were his friends and entered the check post with five beer bottles and invited him to join the party. Moreover in para 3 of the said appeal dated 4.7.91 he has also admitted that to "only oblige them I took one sip and was not at all under his influence". He also stated in para 4 of the said appeal that "nor moral turptitude or corrupt practice is involved in this case" and in para-5 he himself has stated thus:

"5. I am only responsible for the dereliction in the discharge of my official dutes and the punishment is too severe in its comparison."

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26. As we find on a perusal of the pleadings, relevant documents, material and the rival contentions of the counsel for the parties before us "the consumption of liquor (beer)" by the applicant is not the only act by itself which has resulted in his dismissal from service as a result of the disciplinary proceedings. It is his total misconduct involving, inter alia, negligence while on duty which has been proved that has led to the aforesaid punishment. This is quite apparent from the impugned dismissal order dated 27.6.91 (Annexure-I) which finds inter alia, thus:-

"On the other hand Ct. Wazir Singh is the real culprit who not only took his friends to consume beer inside the check post but also supplied glass and jug for this purpose and himself joined the drinking session with them without caring that he was in uniform and on duty. He is the person who forced HC Limji Bhai to join them so that he also becomes a party of his misconduct. He has admitted in O.R. that he was drinking beer inside the check post.

9. In the days of terrorist activities at it's peak and keeping in view the crim infested border area of Ghaziabad the conduct of HC Limji Bhai and Ct. Wazir Singh is highly reprehensible and condemnable. They have not only neglected their sensitive duty, but also lowered down the esteem of the department. They put their lives at risk at the hands of terrorists and criminals and put their arms to rest. In case of attack this could have been disastrous to them and to the department."

27. In view of the above discussion we are of the opinion that the absence of medical examination in the facts and circumstances of this case will not, by itself vitiate the disciplinary proceedings and the aforesaid ground is, therefore, rejected as being devoid of any merit and unsustainable. The decision of the Hon'ble supreme Court cited supra is also not applicable to the facts of the present case.

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It is distinguishable on facts. The three impugned orders do not suffer from any apparent legal launane or infirmity and hence do not warrant any judicial interference.

28. In the result, the O.A. is dismissed. No costs.

A. Vedavalli
24/4/98
(DR. A. VEDAVALLI)
MEMBER (J)

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

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