

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1160/93New Delhi: this the 2nd day of August, 1993.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Constable Rakesh Kumar No. 679/ Security,
 S/o Shri Ram Kumar,
 presently posted in
 Security at Nieman Bhawan,
 New Delhi.

R/o H.-58, Sector 7, R.K.Puram,
 New Delhi

..... Applicant.

(By Advocate: Shri Shankar Raju).

Versus

1. Delhi Administration
 through
 Addl. Commissioner of Police,
 New Delhi Range, Police Headquarters,
 MSO Building,
 New Delhi.

2. Addl. Dy. Commissioner of Police,
 East District,
 Shahdara,
 Delhi

..... Respondents.

(By Advocate: Shri B. S. Gupta)

ORDERBY HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

It was alleged against applicant that while detailed on 'Santry' duty at the Vivek Vihar police station lock-up from 21.00 hr. to 24.00 hrs. on 11.11.87, upon checking by SHO Vivek Vihar he was found under the influence of liquor and sitting with SAF at 12.15 hrs. on a dustbin. When he was asked as to why he was sitting, he failed to speak, stand and walk and kept sitting. The SHO took away his SAF and called him. He then tried to stand up and walked to a distance, but he failed to stand up independently. He was got examined medically

at General Hospital, Shahdara and the Medical Officer vide M.C. opined ' he consumed alcohol and is not under the influence of liquor.'

2. Applicant was suspended by order dated 11.11.87 (Annexure-A1) and a departmental enquiry was initiated vide order dated 12.11.87 (Annexure-A2)

The Inquiry Officer in his report dated 1.12.88 (Annexure-A5) held the charge proved against applicant. Meanwhile he was reinstated on 26.2.88 without prejudice to the D.E. pending against him.

3. On receipt of the Inquiry Officer's report and provisionally agreeing with the same, the Disciplinary Authority directed applicant to show cause vide order dated 23.12.88 (Annexure-A5) as to why the penalty of forfeiture of 3 years' approved service permanently entailing proportionate reduction in pay and treatment of suspension as period not spent on duty should not be imposed upon him.

4. Applicant submitted his reply dated 25.1.89. After considering the same as well as the other materials on record, the Disciplinary Authority imposed the aforementioned punishment vide impugned order dated 24.7.91 (Annexure-A6) against which applicant's appeal was rejected vide impugned order dated 30.4.92 (Annexure-A8) leading to this OA.

5. Applicant's counsel has impugned respondents' action firstly on the ground that the Inquiry Officer by cross-examining the witnesses acted as a prosecutor which vitiated the DE; secondly that

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the Medical Officer was not examined; thirdly that the treatment of the suspension period as not spent on duty was illegal and fourthly on the ground that applicant at the relevant time was not under the influence of liquor.

6. A perusal of the Enquiry Officer's report makes it clear that the questions put by him was only to clear ambiguities and obtain clarifications on points of doubt arising during examination of witnesses. This is fully permissible and there is nothing in the questions put, to indicate that the E.O. had acted as a prosecutor or had made up his mind even before the enquiry concluded. The second ground is equally untenable, because if respondents did not consider it necessary to examine the M.O. it was not incumbent upon them to do so. Indeed it was open to applicant to have prayed for summoning of the M.O. in his defence, but he did not do so. As regards the third ground, the question of treating the suspension period as spent on duty would have arisen only if applicant had been fully exonerated in the D.E. and hence this ground also has no merit. Coming to the fourth ground there can be no doubt that applicant who had consumed liquor was under its influence while on duty at the relevant time, and by the time he was examined by the M.O. its influence had worn off.

7. The O.A. therefore warrants no interference. It is dismissed. No costs.

Dra. of
(P.C.KANNAN)
MEMBER(J)

Adige
(S.R. ADIGE)
VICE CHAIRMAN(A).