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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. ¹³⁰ 578 of 1987

Prem Shanker Vs. Union of India & Others.

Hon. S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. S. Zaheer Hasan, V.C.)

Suit No. 50 of 1987 pending in the Court of Civil Judge, Etah has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff, Prem Shanker was working as Chowkidar. He had instructions to see that the office was closed by time and when he used to check on this score they used to feel it. On 16.11.83 the D.C.S. continued his meeting upto 5.30 P.M. Thereafter there was no light and the D.C.S. was sitting in his room alone after the meeting was over with burning candle. He enquired from the D.C.S. about the time he would leave office, which annoyed him. Ultimately a chargesheet was submitted against him with the allegations that monthly meeting as usual was being held on 16.11.85 and it continued upto about 7 P.M. When half of the staff had gone the plaintiff came to the chamber of the D.C.S. ~~and~~ in drunken state and told him as to why he was sitting late and that he had completed his duty hours and should be relieved. He was told that no relief could arrive and he could not go. Thereafter the

Chowkidar said that he was the staff car driver of the Minister and dam cared about the officer and that he had seen several officers like him and he did not bother if any action was taken. He appeared to be in drunken state but he could not be sent for medical examination because he left the place. The charge memo was served on the Chowkidar to submit his explanation. Inquiry Officer was appointed. The defence had a helper. Ultimately the Inquiry Officer held that the charges were made out against the plaintiff. Ultimately on 28.8.84 he was removed from service. He preferred an appeal which was rejected on 18.11.84. Thereafter he filed the present suit challenging the order of dismissal as well as the order of confirmation of punishment passed by the appellate authority.

3. We do not sit in appeal over the finding arrived at in departmental inquiry and cannot appraise the evidence like a trial judge. The departmental authorities are sole judges of facts and if there be some legal evidence on which their findings can be based, adequacy or reliability of the evidence cannot be permitted to be confessed before us. Of-course if there is no evidence or the findings are perverse or illegal we can definitely intervene.

4. Three witnesses gave evidence regarding the misconduct of the plaintiff on the aforesaid date, time and place. The plaintiff led no evidence in rebuttal nor he himself gave any statement as a witness except that he submitted an explanation. The statements of the witnesses ~~do~~ not suffer from any material infirmity and stand the test of credibility. It was contended that there are some contradiction regarding timings. Frequently people measure time and distance with less exactitude than probably anything else. Such discrepancy relating to time can arise due to lapse of time and memory. It does not go to the root of the matter.

5. The occurrence took place inside the office where several members of the staff were present. It would have been unnatural to produce any outsider as a witness. The statements of such witnesses ^{who} were present in the office because it was a monthly meeting, cannot be rejected merely on the ground that they belong to the department or they were subordinate to the officer if their statement is otherwise acceptable.

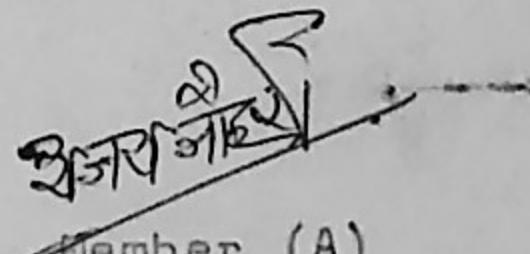
6. The statements of witnesses cannot be rejected merely on the ground that best evidence was withheld or some witnesses were not produced. In such cases the question to be seen as to whether evidence led is sufficient to make out a case or not. The complaint
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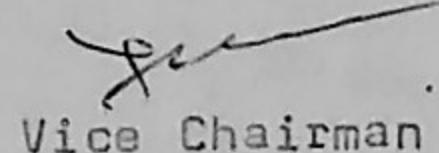
was lodged after some delay because the complaining officer had gone out of station. However the case cannot be thrown out on the ground of such delay. Ofcourse the prosecution version should be scrutinized with caution. Three witnesses were ~~not~~ produced before the Inquiry Officer. The defence helper was there. No objection was raised that the witnesses mentioned in the chargesheet has not been produced and the same was causing any prejudice. It was ^{not} illustrated before us as to how any prejudice was caused to the plaintiff because witnesses mentioned in the chargesheet were not examined. Ofcourse in such cases the statements of witnesses should be scrutinized with caution and if their testimony passes the test of credibility and does not suffer from any material infirmity the same can be accepted irrespective of the fact that they are not mentioned in the chargesheet. Ofcourse it has to be kept in mind that no prejudice should be caused to the accused in defending himself. As already stated no such prejudice was caused to the plaintiff on this score.

7. The occurrence took place after the meeting was over. Some staff had gone and some members of the staff were present. So the officials present in the meeting at the time of occurrence were natural witnesses and their statements cannot be rejected merely on the ground that they belong to the Department or were subordinate to the senior officer

who had complained against the plaintiff, if their statement is otherwise acceptable. A person should normally be presumed to be honest till he is proved dishonest. There is no presumption that such type of witness will not give a true statement. The statements made by them do not suffer from any material infirmity. The plaintiff was a Chowkidar. The meeting extended beyond the office hours which very frequently happens. It was no business of the Chowkidar to enter the office of a senior officer, flash his torch and ask him to finish the meeting and misbehave in the manner alleged by the complainant. His mouth was smelling liquor, his behaviour was not normal so they tried to send him for medical examination but before the R.P.F. people could arrive the plaintiff left the spot. It was contended that the plaintiff was on duty and how he could get liquor during office hours. He could bring the same with him and enjoy in the office hours or could keep in the office and do the "job". So to our mind the finding of the fact arrived at by the Inquiry Officer regarding the alleged misconduct is not perverse, manifestly incorrect nor illegal. Except the arguments mentioned above no other infirmity was pointed out at the time of argument. The plaintiff was a Chowkidar. He misbehaved with a senior officer. A charge memo was submitted. He submitted his explanation. He was

provided with a defence helper. The Inquiry Officer wrote a reasoned order holding that he was guilty. The plaintiff went up in appeal and the appellate authority rejected the same with a reasoned order. The plaintiff had hardly put in six months service as a Chowkidar. So under the circumstances his alleged behaviour naturally prompted the authorities to pass the order of removal. To our mind the punishment, on the facts and circumstances of the case, cannot be condemned as excessive or not commensurate with the gravity of charge. We do not find any good ground to interfere with the order of removal. The application (Suit No.50 of 1987) is dismissed with costs on parties.


Member (A)


Vice Chairman

Dated the 24 March, 1988

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