

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No. 1092/2012**

Pronounced on : 22.11.2016

**Hon'ble Mr. V.Ajay Kumar, Member (J)**  
**Hon'ble Mr. V.N.Gaur, Member (A)**

H.C. Devender Kumar,  
No. 148/NW, D-2/14,  
Type-1, Police Colony,  
Pitampura,  
Delhi-34. ... Applicant

(By Advocate : Mr. Lalta Prasad )

**VERSUS**

Govt. of NCT of Delhi & Ors through :

1. The Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
2. The Commissioner of Police,  
PHQ, MSO Building,  
IP Estate,  
New Delhi.
3. The Joint Commissioner of Police  
Northern Range,  
New Delhi.
4. The Deputy Commissioner of Police  
North West District,  
New Delhi. ... Respondents

(By Advocate: Mrs. Harvinder Oberoi )

## **ORDER**

### **Hon'ble Mr. V.N. Gaur, Member (A) :**

The applicant has filed this OA seeking the following reliefs:-

- “(i) To quash and set aside the order of withholding of next increments for a period of 2 years permanently with cumulative effect dated 02.02.2012
- (ii) To direct the respondents to release the amount so withheld following the order dated 02.02.2012.
- (iii) To allow the original application with cost of the litigation.
- (iv) To pass such other and further order which their Lordships of this Hon'ble Tribunal fit and proper in existing terms and circumstances of the case.”

2. The Respondent No.4 instituted a departmental proceeding against the applicant by serving a summary of allegation dated 18.12.2009 which reads as follows:-

“There is a allegations against you, HC Devender no-148/NW, PIS no-28822821, that while posted at P.S.Maurya Enclave and detailed for picket duty at Income Tax Colony from 8 P.M. to 8 A.M. In the intervening night of 11-12/09/09, you were found under the influence of alcohol. It is further alleged against you that while checking the vehicle you misbehaved with one Gaurav Abott S/o Naveen Chander R/o A-4/101, Printers Appt. Sec.-13, Rohini, Delhi. On the complaint Gaurav Abott you were medically examine at B.J.R.M. Hospital, Jahangir Puri, vide M.L.C/M.E. No.754/09 DT 12/09/09 in which Doctor opined “smell of alcohol+ “ the above at on your part amount to gross misconduct indiscipline and unbecoming of Police Officer which renders you liable for Deptt. Enquiry.”

3. As the applicant denied the charge, the disciplinary authority ordered a departmental enquiry which concluded with a report of the Enquiry Officer dated 05.02.2010. The finding of the Enquiry Officer (EO) was as under:-

“Conclusion

In view of the above discussion, the charge, served upon H.C.Devender Kumar, No.148/NW that Smell of Alcohol was found +ve during the course of Medical Examination dated 12.09.2009, while he was on duty at Police Picket, Income Tax Colony, stands proved. However, the statement of Dr. Ashish Chaudhary (DW-3), who is also a well, qualified Doctor/Surgeon and Ex.Resident Surgeon of R.M.L. Hospital, New Delhi also needs consideration.”

4. The report of the E.O. was served on the applicant and he submitted his representation. The disciplinary authority after considering his representation passed an order on 14.05.2010 imposing the penalty of withholding of next increment for a period of two years permanently with cumulative effect. The appeal filed by the applicant dated 22.06.2010 was also rejected by the appellate authority vide order dated 02.02.2012.

5. The learned counsel for the applicant states that the Enquiry Officer and the Disciplinary and Appellate Authorities have wrongly upheld the allegation made by one Mr. Gaurav Abott that the applicant was under the influence of alcohol at the time when Mr. Abott was intercepted driving under the influence of alcohol. According to learned counsel, the

applicant had adequately explained the reasons for smell of alcohol that was recorded in the MLC given by the Doctor at Babu Jagjivan Ram Memorial Hospital (BJRM Hospital). On the previous date i.e. 10.09.2009, the applicant had fallen ill and consulted Dr. Ashish Chaudhary at Narela, Nursing home who had prescribed certain medicines that included syrup Corex. It is well known, as also certified by Dr. Chaudhary as defence witness during the departmental enquiry, that consumption of syrup Corex could cause feeling of laziness in the patient. Further the applicant never misbehaved with Mr. Abott which has also been confirmed by him during his deposition in the disciplinary enquiry. The Enquiry Officer had also stated that the documentary evidence enclosed by the applicant seemed to be justified and tenable. The applicant has been punished solely relying on the observation of the Doctor of BJRM hospital who only gave a perceptual comment that the applicant smelled of alcohol and did not measure it through any reliable means. He further submitted that the respondents in the counter reply have questioned his statement that he had consulted a doctor at Narela on the ground that he was actually posted at Maurya Enclave which was far from that area. The applicant had explained that he had gone to Dr. Ashish Chaudhary as he was under treatment at that Nursing home for more than three years. In his

representation to the appellate authority the applicant had also stated that he had left his mobile phone at his residence while visiting one of his relative at Narela, where he had fallen sick and consulted the doctor. The disciplinary authority despite tentatively agreeing with the finding of the Enquiry Officer and without issuing any disagreement note, has held him guilty of the charges and imposed penalty. The learned counsel also raised the question of proportionality of the penalty imposed on the applicant.

6. The learned counsel for the respondents, on the other hand, submitted that respondents had proceeded against the applicant in accordance with the Delhi Police (Punishment and Appeal) Rules, 1980 and full opportunity was provided to him to defend himself. The charge against the applicant was that he was smelling of alcohol while on duty on the night intervening 11-12/09/09 and the same was established on the basis of certificate given by the doctor on duty at BJRM hospital on 12.09.2009. In his order, the disciplinary authority had tentatively agreed with the finding of Enquiry Officer and gave his own reasoning for coming to a conclusion that the applicant was guilty of the charge levelled against him. There was no legal infirmity in this. The applicant in his representation to the disciplinary authority had mentioned the grounds which have now been argued by the learned counsel

for the applicant and the disciplinary authority had dealt with these grounds in the order dated 14.05.2010. The applicant had again raised the same grounds in his appeal and also during personal hearing by the appellate authority. The appellate authority in its order dated 02.02.2012 has held that the version of the applicant was an after thought as he failed to produce or show the bottle of the medicine and the prescription of the doctor to ACP/PG Cell or to the disciplinary authority. According to the learned counsel, the applicant has failed to establish any deviation from the prescribed procedure in the disciplinary enquiry or violation of any statutory rules and therefore, it was not a fit case for this Tribunal to have a judicial review of the orders passed by the respondents.

7. We have heard the learned counsel for parties and perused the record. The applicant has not alleged any violation of the rules or procedure prescribed under the Delhi Police (Punishment and Appeal) Rules, 1980 or the principles of natural justice except that the Disciplinary Authority had taken a new ground of the call record of his mobile phone in the final order which he could not effectively rebut being a fresh ground. This plea does not carry any conviction as the applicant did get opportunity in the orderly room held on 06.05.2010 where he was confronted with information but he

could not explain this. Besides, the Disciplinary Authority has given other supporting reasons for not believing his defence of having visited Narela and taking treatment from there. The other contentions of the applicant have also been dealt with by the disciplinary authority in the order 14.05.2010.

8. The main plea of the applicant is that the finding of the doctor on duty at BRJMH where he was medically examined was countered by the view held by another competent doctor that smell of alcohol could arise from consumption of syrup Corex prescribed to the applicant for certain ailments. It has been argued that a day earlier the applicant had visited a relative at Narela and at that time he fell sick and consulted the doctor at Narela Nursing home who prescribed the syrup Corex along with some other medicines. During the disciplinary enquiry it has been deposed by the attending doctor at the Nursing Home that smell of alcohol could arise from syrup Corex. This plea has been taken note of by the Enquiry Officer and in his conclusion he has stated that the statement of the doctor from Narela Nursing home should also be considered. However, what is relevant in the context of the allegation against the applicant is that the alleged incident is stated to have occurred at 2.10AM on 12.09.2009 and he was examined at BJRM hospital at 3.34 AM i.e. one hour twenty four minutes after the incident. The applicant has not stated

anywhere the time at which he consumed the medicine which was to be taken '2-3 spoons of syrup Corex daily' according to the prescription. The report of BJRM hospital does not mention anything about the consumption of syrup Corex by the applicant. Apparently the applicant did not bring this fact to the notice of the doctor who examined him. It cannot be denied that the applicant being a Head Constable of Delhi Police was aware of the purpose for which he was examined at the hospital and the likely consequences of the finding given by the doctor. If he had consumed a medicine with the possibility of smelling alcohol he would have mentioned it to the concerned doctor and the same would have been brought on record. Since the examination was conducted by a qualified doctor, he would be aware of the effect of alcohol contained in 2-3 spoons of Corex after at least one hour and twenty four minutes of its consumption. There is no such reference in the MLC. We, therefore, do not find any reason to disbelieve the finding of the doctor of BJRMH recorded in the MLC. The evidence of Dr. Ashish Chaudhary is also of a general nature and does not lead to a conclusion that the applicant smelled of alcohol at the time of incident necessarily because of consumption of syrup Corex.

9. The learned counsel for the applicant has also raised the plea of proportionality of the punishment. It is well settled law



that the quantum of punishment is a prerogative of the disciplinary authority and the Courts should not ordinarily interfere in the same. In **Praveen Bhatia Vs. UOI & Others** (2009 (1) SCC (L&S) 801) the Hon'ble Supreme Court observed thus:

“15. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the Court can direct re-consideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases.”

10. The Disciplinary Authority in this case has considered all the relevant factors before arriving at the decision to impose the penalty and therefore it does not call for any interference by this Tribunal.

11. It is relevant to recall the Hon'ble Apex Court in **B. C. Chaturvedi vs. U.O.I.**, (1995) 6 SCC 749 holding that “the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made”. This limitation imposed on the jurisdiction of the Tribunal in the matter of disciplinary proceedings is common with the judgments of Hon'ble Supreme Court in **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A.Nagamalleswara Rao**, AIR 1998 SC 111.

12. In the light of the foregoing discussion and the reasons stated, we do not find any justification to interfere in the decision of the Disciplinary Authority as confirmed by the Appellate Authority. The OA is, therefore, dismissed as devoid of merit. No costs.

**(V.N.Gaur)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

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22<sup>nd</sup> November, 2016