

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2559/2013

Reserved on: 06.12.2016
Pronounced on: 14.12.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Const. Virender [No. 910/E],
R/o Pocket D, Flat No.30,
Dilshad Garden,
Delhi.

...Applicant

(By Advocate: Shri Harpreet Singh)

Versus

1. The Commissioner of Police,
Police Headquarters,
MSO Building, ITO
New Delhi-110 002.
 2. The Joint Commissioner of Police,
South-Eastern Range, Delhi.
 3. The Additional Deputy Commissioner of Police,
East District, Delhi.
- ...Respondents

(By Advocate: Ms. Rashmi Chopra)

O R D E R

Hon'ble by Dr. B.K. Sinha, Member (A):

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by Memorandum dated 15.06.2010 whereby departmental proceedings were initiated against him, order dated 29.06.2011 passed by the disciplinary authority (respondent no.3) imposing upon him punishment of forfeiture of two years approved service permanent entailing proportionate reduction in his pay by

two stages, and the appellate order dated 31.10.2012 rejecting his appeal against the order dated 29.06.2011 and confirming the order passed by the disciplinary authority.

2. By way of the instant OA, the applicant has prayed for the following relief(s):-

- (i) To call for the records of the case;
- (ii) To quash and set aside the impugned memorandum dated 15.06.2010, impugned order of penalty dated 29.06.2011 passed by R-3 and the impugned appellate order dated 31.10.2012 passed by R-2.
- (iii) To grant the cost and expenses of the OA in favour of the applicant, and
- (iv) To grant any other relief as deemed just and proper by this Hon'ble Tribunal.

3. The facts of the case, briefly stated, are that a departmental enquiry under the Delhi Police (Punishment & Appeal) Rules, 1980 was initiated against the applicant on the allegation that on 03.09.2008, while posted as Constable at PS, New Ashok Nagar, he was assigned PSO duty with one Virender Rawat from 8.00am to 8.00pm and a 9MM pistol No.16211740 with 5 cartridges was issued to him from PS Malkhana. The applicant did not deposit his service pistol back in PS Malkhana till late evening after performing his duty. Later on, in the intervening night of 03/04.09.2008,

his service pistol was snatched away by some unidentified person(s) in the area of PS Anand Vihar. A case vide FIR No.462/08 under Sections 392/34 IPC was registered in this regard. The applicant was also medically examined in Dr. Hedgewar Hospital vide MLC No.2656/08 and he was found under the influence of liquor. The enquiry officer, after recording of evidence, submitted his report dated 27.05.2011 holding the charge levelled against the applicant as proved.

4. Against the enquiry report, the applicant submitted a detailed representation in June, 2011 and he was heard in the OR on 20.06.2011. However, the disciplinary authority vide order dated 29.06.2011 imposed upon the applicant punishment of forfeiture of two years approved service permanently and further entailing proportionate reduction in his pay by two stages. The applicant filed an appeal against the order of the disciplinary authority, which also came to be rejected by the appellate authority vide order dated 31.10.2012.

5. The applicant has contended that the instant OA deserves to be allowed on the following grounds:-

- (i) Neither of the authorities i.e. disciplinary and appellate authorities have applied their mind to the issue in controversy and passed the impugned orders, which are non-speaking in nature;

- (ii) The disciplinary authority, while passing the impugned punishment order, has not returned any independent finding and rather reiterated the observations of the enquiry officer. Hence, the impugned order deserved to be quashed having been passed on pre-conceived notion;
- (iii) It is further submitted that the enquiry officer seems to have been swayed by the fact that applicant was under the influence of liquor while neither such a charge had been there in the chargesheet nor was it proved that he consumed liquor during office hours. It seems that the enquiry officer has taken a serious note of consumption of liquor and proved the charge which has caused prejudice to him. However, the applicant has himself admitted that he had consumed liquor after duty hour but that cannot be taken note of while proving the charge;
- (iv) Insofar as the allegation of non-deposit of weapon in the PS Malkhana is concerned, the applicant submitted that he was on PSO duty from 8 am to 8 pm. However, he was asked to be on patrolling duty from 7 pm to 11 pm. Thus, there was no occasion for him to return the service weapon on the same day as he was on night duty. It is further submitted

that even otherwise he could not deposit the weapon in the Malkhana as during night the Malkhana was closed.

- (v) The applicant submitted that the enquiry officer has totally ignored his defence evidence and the charge itself is non-sustainable in view of the clear deposition of one Ct. Narender (No.2513/E) [PW-2] and his cross-examination. Moreover, there has been no negligence on part of the applicant which could warrant imposition of impugned punishment;
- (vi) The applicant submitted that the enquiry officer has proved the charge against him only on the testimony of one HC Pushpender (No.401/E) [PW-5] basing only on consumption of alcohol and MLC report. In this regard, the applicant would contend that even the concerned doctor of Hedgewar Hospital was not examined during departmental proceedings who could have examined at what time the liquor was consumed by the applicant. Even no urine or ballooning test was got done. Hence, the charge is liable to be dropped applying principle of natural justice;
- (vii) Insofar as snatching of service weapon is concerned, the applicant submits that on the night of 3/4.09.2008 after his duty he was going to his house

and when he reached at about 12 midnight at AV-I picket at road no.56, stopped his motorcycle and was passing urine and in the meantime three persons (Rickshaw pullers) came and snatched his service pistol and purse containing Rs.29,000/- and ran away. However, he has been able to save his life from the cruel hands of bad elements and reported the matter making a PCR call and FIR No.462/08 was got registered.

(viii) It is also submitted that deposition of DW-1, HC Hari Chand, No.676/E, PS Anand Vihar, Delhi reveals that the service pistol was recovered and the same is now lying in the Malkhana of PS Anand Vihar and even produced before the Court. Therefore, no loss to the government property was caused. But the enquiry officer did not appreciate the deposition of DW-1, who was a material witness.

6. In view of the ground grounds, the applicant submits that the instant OA deserves to be allowed.

7. The respondents have filed their reply denying the averments of the applicant in the OA and reiterated the allegations. Learned counsel for the respondents submitted that the applicant was provided with the enquiry report. The applicant submitted a representation against the enquiry

report and he was afforded an opportunity of being heard but nothing new was said apart from what he has explained in his representation. Moreover, the pleas taken by the applicant were not tenable as he left the police station jurisdiction after duty hours with service pistol with permission of the competent authority thereby contravened the instructions contained in SO No.57/2008. Learned counsel for the respondents reiterated that the MLC report revealed that the delinquent had consumed alcohol at the time while he was robbed which amounted to a serious misconduct. It is further averred that while passing the impugned punishment order, the disciplinary authority had gone through the entire records including evidence and applying judicious mind came to rightful decision. Learned counsel also added that the appellate authority also taken note of all the materials and passed a speaking order confirming the order of the disciplinary authority. Hence, the learned counsel submits that the instant OA deserves to be dismissed.

8. We have carefully gone through the pleadings of the parties as also the documents including the departmental file produced before us and law citations relied upon on either side. We have also patiently heard the oral submissions made by the learned counsel representing the

parties. Following issues are germane to adjudicate the controversy involved in the instant case:-

- (1) Whether the applicant was on patrolling duty/picket duty or night duty after the PSO duty so that it left no time to him to deposit the service weapon?
- (2) Whether the applicant was under the influence of liquor when the incident of robbing wherein he had been relieved of service pistol and personal cash amounting to Rs.29,000/- has taken place?
- (3) Whether the impugned orders suffer from any procedural lacuna which serves to vitiate the same?

9. Insofar as the first of the issues is concerned, the sequence of events, as detailed in the defence of the applicant, reads thus:-

- (i) The applicant was issued a 9MM pistol No.16211740 with 5 cartridges at 9.30 am as per DD Entry No.73. This is proved from the statement of HC Gajender Singh, 1631E, PS New Ashok Nagar, Delhi and is admitted by the applicant.
- (ii) It is further seen that the applicant was on PSO duty with one Virender Rawat till 8.00 PM. However, there is no entry in the copies of DD which are there in the DE proceedings file of the

applicant to show the return of the applicant to police station and his departure on patrolling duty.

- (iii) The next station diary entry is on 9/08 relating to FIR No. 462/08. Thus, there is nothing in the Station Diary to show that the applicant had made a departure on patrolling duty. It is evident from the statement of Ct. Mahak Singh, No.1254/E, PS New Ashok Nagar, New Delhi that he had recorded departure of the applicant, who was on duty from 8.00 am to 8.00 pm. However, he had not reported his arrival after completion of PSO duty.
- (iv) The applicant has relied upon the entry in the Duty chart prepared for patrolling duty, which has been placed at page 21 of the paper book, and reads thus:-

| Duty | Morning Patrolling | Evening Patrolling | Night Patrolling |
|-----------|--|---|---|
| Beat No.1 | Ct. Mukul 922 Ct. Virender 910-PSO | HC Vijay 261 Ct. Mukul 922 Ct. Satinder 1281 | Ct. Mukul 922 PS Anand Vihar at 1930 hrs. |

- (v) The applicant submits that he was on duty till 2300 hrs. However, in the above chart, there is no mention of the applicant being assigned night patrolling duty. Though he has been shown on PSO duty in the morning. There is nothing on record to show the applicant's departure on patrolling duty either in Daily Diary or General

Diary. We find from the enquiry report as also from counter affidavit filed by the respondents that it has been presumed that the applicant was on patrolling duty when the incident had taken place while he was returning home after duty hours and was under influence of liquor. For the sake of clarity, we extract the discussion of evidence in the enquiry report, which reads as follows”-

“...The second article of charge that he did not deposit the Govt Pistol in Malkhana after completion of duty is also proved as PW-4 has produced the arms & ammunition issue register according to which Govt. Pistol with 5 live cartridge were issued to Ct. Virender which he did not deposit back and proceeded to his home without depositing the arms and ammunition in the Malkhana in contravention of instructions contained in SO No.57/2008.”

10. The respondents either in the departmental proceedings or in the counter affidavit have not raised this question. Per contra, they have acted as if the claim of the applicant on being night patrolling duty has been taken for granted. Rather the respondents have stated in their counter affidavit that “in the cross examination of PW-4, it clearly came out that the police personnel who are on night duty, necessarily do not deposit the arms back on the same day, however, the applicant was detailed for PSO duty with one Sh. Virender Rawat from 8 AM to 8 PM, residing in the area of PS New Ashok Nagar. Further, he was detailed for evening patrolling. Hence, he should have deposited his

service pistol in the PS Malkhana after his duty was over as per the standing order. The PS Malkhana remains open 24 hours for issuing and depositing arms and ammunition to the staff but the applicant Constable did not deposit back his service pistol in PS Malkhana till late evening after performing his duty on 03.09.2008. However, if the Malkhana was locked, he should have brought the same to the notice of DD/SHO but he did not do so. Hence, the plea taken by the applicant is wrong and denied.”

11. From the above averments of the respondents, it would appear that a distinction has to be drawn between evening patrolling and night patrolling. Even if we accept the contention of the applicant that he was on evening patrolling duty, thereafter he was expected to deposit the weapon in PS Malkhana as convention of retention of weapon is available as a concession only to such personnel who perform night duties.

12. It is noted that when a duty is assigned, the patrolling party/picket party assembles in the police station, collects weapon and then proceeds to the place of duty. After duty hours, the patrolling/picket party returns to the police station, deposits the weapon and then disbanded. The defence of the applicant has to be tested in this light.

13. We also take note of the averments of the respondents that the Malkhana remains open for 24 hours. This is natural as the weapons are stored there and may be required at any hour of the day. It also stands to reason that even if the Malkhana was closed, the applicant should have contacted the officer In charge and sought his direction in this regard. We also find that the stand of the applicant has been shifting as during the course of arguments, it was submitted by him that he was on picket duty. Therefore, we have reason to doubt the veracity of the statement that the applicant was on night patrolling duty. Moreover, there is no supporting evidence either in DD or GD to prove that the applicant was on patrolling duty.

14. In view of the above, we decide this issue against the applicant.

15. Insofar as the second of the issues is concerned, we start by taking note of the charges levelled against the applicant, which reads thus:-

"It is alleged against Ct. Virender, No.910/E (PIS No.28900892) that while he was posted at PS, New Ashok Nagar, he was assigned PSO duty with one Sh. Virender Rawat, residing in the area of PS New Ashok Nagar from 8.00am to 8.00pm on 3.9.08. He got issued 9MM pistol No.16211740 with 5 cartridges from PS Malkhana in his name but he did not deposit it back in P.S. Malkhana after PSO duty on 3.9.2008. Later, while he returning home, in the night intervening 3 & 4.9.08 at 12.15 hrs, some robbers obstructed him at Ramprastha crossing, PS Anand Vihar and snatched his service pistol with 5 live cartridges, his purse containing Rs.29,000/- in cash. In this regard, a case vide FIR No.462/08 us 392/34IPC was registered at PS Anad Vihar. He was

examined in Dr. Hedgewar Hospital vide MLC No.13056/08 and was opned "alcohol smell (+) by doctor. He should have deposited his service pistol in the PS Malkhana after his PSO duty was over, but he failed to do so.

The above act on the part of Ct. Virender, No.910/E amounts to gross negligence, carelessness and dereliction in the discharge of his official duty, which render him liable to be dealt with departmental action under the provisions of Delhi Police (Punishment & Appeal Rules, 1980."

16. The applicant in his defence statement to the Enquiry Officer has pointed out lacunae in the enquiry relating to the allegation of his being under influence of liquor at the time of incident. These have already been stated in the respective statements of the witnesses and need not be repeated here except to say that the applicant had pointed out that consumption of liquor after duty hour does not constitute a part of charge; the blood sample was taken but never tested; his urine sample was neither taken nor tested; and that coming to the worst consumption of liquor after duty hours does not constitute a misconduct. The applicant has relied upon the statement of PW-1 wherein he admits that blood samples were taken and he handed over the same to SI Rupesh Khatri. However, no evidence has been forthcoming qua the blood samples being sent for examination and this claim of the applicant as also his stand that his urine was not taken and tested stand admitted by various witnesses. It is also an admitted fact that the doctor, who had examined the applicant and could have reported that the applicant

appeared before him under influence of liquor on account of smell of liquor emanating from him, was also not brought to the witness box. The respondents, on the other hand, relied upon the statement of PW-5 and the medical report of the doctor to prove the charge against the applicant as claimed by applicant in Ground No.III (page 9 of the paper book), which reads as under:-

“That, on merits, it is most respectfully submitted, the enquiry officers seems to have been swayed by the fact that the applicant had consumed alcohol even though the same was not a charge against the applicant as the applicant had consumed alcohol, after his duty hours....”

Here, the relevant part is that “the applicant had consumed liquor and it constitutes an admission. It is preliminary rule of evidence that what is admitted need not be proved as provided under Section 19 of the Indian Evidence Act.

17. It is an agreed position that consumption of liquor does not constitute a part of charge against the applicant in the charge memo. However, it is one of the necessary links of the entire scene leading to the incident and has bearing upon the conduct of the applicant. It is a fact that a police officer is on duty for 24 hours. We also take note of the fact that the Hon’ble Supreme Court in *Rattan Lal V/s. State of Haryana* [1983 (2) SLR 159(P&H)] has laid down that mere consumption of alcohol while not on duty does not amount to misconduct and after enquiry merely because he is found

under the influence of liquor without any thing move does not render the employee of any such disciplinary action.

18. However, what is pertinent here is that the applicant was carrying service pistol issued to him for duty purposes and he had not returned the same. Hence, till so long as the service pistol remained with him, the responsibility of safeguarding the weapon lays heavy upon the applicant. The fact that he had consumed liquor carrying the service pistol speaks volumes of his character despite the fact that consumption of liquor does not constitute a part of the charge.

19. This issue is accordingly decided against the applicant.

20. Insofar as the third of the issues is concerned, nothing has been said about the procedural lapses having taken place during enquiry proceedings. Hence, this issue does not require adjudication.

21. In conclusion, what we find is that the applicant performs PSO duty during the day, thereafter evening patrolling duty and leaves with the service weapon. He is divested of service weapon and personal cash of Rs.29,000/- while returning to home on his motor cycle under the influence of liquor. We have already stated that a police officer is on duty round the clock and particularly when he is in possession of the government weapon. If he does not

deposit the same after duty hours, a special responsibility is cast upon him about safeguarding the weapon. Loss of government weapon is a serious act particularly when it is robbed while the officer was under influence of liquor. We also find that the respondents have been lenient with the applicant in awarding punishment. It appears that the punishment in question had been awarded on account of the fact that the robbed weapon subsequently recovered. Yet, it does nothing to mitigate the misconduct on part of the applicant.

22. In view of our above discussion, we find nothing wrong in the impugned orders passed by the respondents. Resultantly, the instant OA fails and the same stands dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/AhujA/