

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1825/2015

This the 11th day of March, 2016

**Hon'ble Mr.Justice M.S.Sullar,Member, (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Prakash Singh,
Age about 35 years
S/o Sh. Nathi Singh,
R/o B-270A, Tigri Ext.,
Delhi-110062
PIS No.28862410
Presently posted:
P.S Sarita Vihar,
S-E District. ... Applicant

(Argued by: Shri Anuj Kumar Sharma, Advocate)

Versus

Commissioner of Police & Ors. Through

1. The Commissioner of Police,
Police HQ, IP Estate,
New Delhi.
2. The Spl. Commissioner of Police,
Armed Police,
Delhi.
3. The Dy. Commissioner of Police,
7th BN.DAP, Delhi
4. The Dy. Commissioner of Police,
Establishment, Delhi. ... Respondents

(By Advocate: Ms. Harvinder Oberoi)

ORDER(ORAL)

By Hon'ble Mr.Justice M.S.Sullar,Member(J):

The contour of the facts and material, exposed from the record, relevant for deciding the core controversy, involved in the instant Original Application (OA) is that the applicant, Prakash Singh was appointed as Constable in Delhi Police. Later on, he was posted on

deputation with the Excise Department. On 05.11.2006, at about 10.00 p.m., he was on surveillance duty in the area of Sangam Vihar, New Delhi as ordered by his superior. According to the department, on 05.11.2006, he consumed liquor and entered the house of Smt. Darkash Praveen, wife of Anwar Ahmed resident of G-9/69 Ratiya Marg, Sangam Vihar, New Delhi. He caught hold of her from back side under the influence of liquor and tried to molest her. Thus he outraged the modesty of complainant Smt. Darkasha Parveen. In the wake of her statement, a criminal case was registered against the applicant on accusation of having committed the offences punishable under Sections 354 and 451 of IPC vide FIR No.1052 dated 06.11.2006, by the police of Police Station Sangam Vihar, New Delhi. After completion of investigation, the final police report was submitted and applicant was put on trial for the pointed offences in the criminal court.

2. At the same time, departmental proceedings were also initiated against the applicant for gross misconduct, negligence and dereliction in performance of his official duty and conduct unbecoming of a police officer which rendered him liable to be punished under the provisions of Delhi Police (Punishment and Appeal) Rules,1980 (hereinafter referred to as "relevant rules"). Ultimately, the applicant was charge sheeted and Enquiry Officer (EO) was appointed. The EO, after examining the record and the evidence, concluded that charge of outraging the modesty was not proved against the applicant. However, he was held guilty of the charge that he was under the influence of liquor at the relevant time, place and date through the enquiry report issued on 31.03.2011 (Annexure A-11).

3. Agreeing with the findings of the Inquiry Officer, after providing adequate opportunities of being heard and after following statutory procedure, the Disciplinary Authority awarded the punishment of withholding the next increment temporarily for a period of one year to the delinquent Constable by means of impugned punishment order dated 2.5.2011 (Annexure A-1). The time barred appeal filed by him was dismissed as well by means of impugned order dated 02.01.2014 (Annexure A-2) by the Appellate Authority.

4. Aggrieved thereby the applicant has preferred the instant OA to challenge the impugned orders of disciplinary (Annexure A-1) and appellate authorities by invoking the provisions under Section 19 of Administrative Tribunal, Act, 1985.

5. Seequally, the case set up by the applicant, in brief, insofar as relevant, is that on 05.11.2006 he was on surveillance duty as ordered by his superior in the area of Sangam Vihar, New Delhi. He spotted Anwar Ahmed and went inside his house to gather information. The applicant has also asked Anwar Ahmed to stop illegal activities in the area, otherwise he would be arrested. At this Anwar Ahmed became offended and threatened him (applicant). Thereafter, applicant left the house, went to meet his friend who was Food and Beverage Manager of Sangam Vihar Club, and at around 11.00 PM he left for his home. In the meantime, Police came and took him for medical examination where he was found to have consumed alcohol as per report (Annexure A-4). Subsequently, a false criminal case was stated to have been registered against the applicant by the police on the complaint of

the complainant Darkasha Parveen vide FIR No.1052 dated 06.11.2006 under Sections 354 and 451 by the Police, Police Station Sangam Vihar. He was accordingly charge sheeted as per charge sheet (Annexure A-5) by the criminal court. Departmental enquiry was also initiated against him.

6. According to the applicant, the EO has not considered the relevant evidence and has ignored his defence. He was held guilty for consumption of liquor without any specific charge in this regard. He was awarded punishment of stoppage of next increment temporarily for a period of one year by the Disciplinary Authority by means of impugned order dated 02.05.2011(Annexure A-1) and his appeal was also dismissed by the Appellate Authority. Later on, he was acquitted in criminal case vide judgment dated 26.11.2012 (Annexure A-12) of acquittal by the trial magistrate. It was claimed that once the applicant was acquitted of criminal charge, then the inquiry proceeding vitiates and any punishment imposed by the department is illegal, in view of Rule 12 of the relevant rules. Thus the charge of being found under the influence of liquor against the applicant is misconceived. Even smell of liquor in medical report is not sufficient to hold him guilty in this regard.

7. Levelling a variety of allegations and narrating sequence of events in detail, in all, the applicant claimed that the impugned order of punishment (Annexure A-) and Appellate order (Annexure A-2) and other inquiry proceedings are arbitrary, illegal and without jurisdiction. On the basis of aforesaid grounds, the applicant sought to challenge and set aside the impugned orders and disciplinary proceedings in the manner indicated hereinabove.

8. Likewise, the contesting respondents refuted the claim of the applicant, filed the reply and pleaded that the inquiry against applicant was conducted for misconduct and outraging modesty of complainant Darkasha Parveen, wife of Anwar Ahmed on 05.11.2006 under the influence of liquor in her dwelling house, by following the relevant rules. Tentatively, agreeing with the findings, the disciplinary authority, delivered a copy of inquiry report to the applicant with the direction to submit his representation if any, within a period of 15 days vide letter dated 30.03.2011. He submitted his representation on 13.04.2011. After taking into consideration the totality of the facts and circumstances, material and evidence of record, the applicant was awarded punishment of stoppage of next increment temporarily for a period of one year and his appeal was dismissed as time barred, as well, by the Appellate Authority. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

9. Contradicting the contents of the reply and reiterating the ground contained in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we find that there is no merit and the present OA deserves to be dismissed for the reasons mentioned herein below.

11. Ex-facie the arguments of learned counsel for the applicant that since subject matter of the charge in the criminal court, in which he was acquitted, was the same so the departmental

proceedings on the same cause of action cannot be initiated and no punishment can be awarded to him in view of the bar contained in Rule 12 of the relevant rules, are not only devoid of merit but misplaced as well.

12. As is evident from the record, the applicant was only charge sheeted for outraging modesty of Darkasha Parveen under Section 354 IPC and for trespassing her house under Section 451 Cr.PC vide order dated 23.07.2009 (Annexure A-6) by the trial magistrate. He was never charge sheeted or tried for an offence of consumption/influence of liquor for which the EO has held him guilty in the departmental proceedings. That means, the allegation of "under the influence of liquor" in the departmental enquiry was entirely a different charge, which was never the subject matter in criminal case, for which the applicant was punished on the basis of report of EO by the competent authority, vide impugned order dated 02.5.2011 (Annexure A-1) which, in substance, is as under :-

"This is the final order in departmental enquiry conducted against Const. Prakash No.5454/Dap (PIS No.28862410) under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 vide this office order No.3475-3504/HAP-7th Bn. DAP, dated 26.05.2010 on the allegation that while posted in Excise Department on deputation from Delhi Police, on 05.11.2006 at 10 PM he went to the house of one Smt.Darkasha Parveen w/o Sh. Anwar Ahmed R/o G-9/69, Ratiya Marg, Sangam Vihar New Delhi. He caught Darkasha Parveen from back side under the influence of liquor and tried to molest her. Thus he outraged modesty of Darkasha Parveen. On the statement of Smt. Darkasha Parveen a case FIR No.1052/2006 dated 06.11.2006 U/s 354 IPC, P.S. Sangam Vihar, Delhi was registered against Const. Prakash, No.454/RTB (Now 5454/DAP). He was arrested on 06.11.2006 in this case and charge sheet was filed against him on 25.05.2007 in the court.

The DE was entrusted to Insp. Rajender Malik for conducting the same on day to day basis, who served the Summary of Allegation etc upon the delinquent on 16.10.2010. The delinquent did not admit the allegations;

hence six PWs were examined by the Enquiry Officer in the presence of the delinquent under Rule 16 (iii) of Delhi Police (Punishment & Appeal) Rules, 1980. On the basis of testimony of all the six PWs, the EO framed charge upon the delinquent on 19.01.2011 after getting it approved from the Competent Authority. The delinquent neither admit the charge nor produced any witness in this defence. On 03.03.2011, he submitted his defence statement to the Enquiry Officer. On 03.02.2011 the Enquiry Officer completed proceedings and submitted his findings concluding therein that first portion of the charge that "he was found under influence of liquor" is proved. The second part of the charge that "he tried to molest Smt. Darkasha Parveen" is not proved.

Agreeing with the findings of the Enquiry Officer, a copy of the same was delivered to him on 02.04.2011 with the direction to submit his representation, if any, within 15 days vide this office UO No.2455/HAP-7th Bn.DAP, dated 31.03.2011. He submitted his representation on 13.04.2011 stating therein that he never claimed to be a teetotaler and mere smell of alcohol in breath does not constitute a misconduct. This plea is not admitted MLC No.158201/06 (Ex.PW-4) conducted at AIIMS is very clear, according to which he consumed alcohol on that day. However, in the interest of equity, fair play and justice, he was heard on OR on 20.04.2011 where he admitted that he had consumed alcohol on that day but was not on duty. This plea is not admitted. In case he was not on duty then why he visited the residence of Smt. Darkasha Parveen on that day at late hours in drunken state.

I have carefully gone through the testimony of PWs and other material evidence on record with reference to the findings of the Enquiry Officer as well as representation of the delinquent. The charge of consumption of liquor is proved. It is also proved that he visited the house of Smt. Darkasha Parveen at late hours in drunken state. Charge of Molestation could not be proved.

After evaluating the overall issue as well as circumstances of the case, testimony of PWs and conclusion drawn by the Enquiry Officer as well as representation of the delinquent. I feel that a major punishment of lesser impact sufficient to meet the end of justice as the charge of molestation is not proved. Therefore, having regard to the facts and circumstances as discussed above, I Rajiv Ranjan, Dy. Commissioner of Police, 7th Bn. DAP hereby award a punishment of withholding of next increment temporarily for a period of one year to the delinquent Const. Prakash No.5454/DAP (PIS No.28862410)

Let a copy of this order be given to the Const. Prakash 5454/DAP free of cost. He can file an appeal against this order to the Spl.Commissioner of Police, Armed Police, Delhi within a period of 30 days from the date of receipt of this

order on a non-judicial stamp paper worth Rs.00.75 paise by enclosing a copy of this order, if he so desires.”

13. Meaning thereby there was clear averment in the charge sheet that applicant was under the influence of liquor at the relevant time. He was fully aware of this allegation of “under the influence of liquor” from the very beginning during the course of enquiry. This fact is duly proved from the medical report. The EO examined and relied upon relevant evidence, including medical report and recorded his conclusion. Concurring with the findings of the EO, the competent authority has passed the impugned order of punishment. Moreover, no prejudice is shown to have been caused to the applicant in this relevant connection.

14. Similarly, the next contention of learned counsel that departmental proceedings are vitiated in view of Rule 12 of the relevant rules is again not tenable and deserves to be repelled for more than reasons.

15. At the first instance, Rule 12 postulates that a police officer cannot be departmentally punished on the same charge or on a different charge upon the evidence cited in the criminal case, where the criminal charge has failed on technical grounds or in the opinion of the court or on the Deputy Commissioner of Police that the, prosecution witnesses have been won over and the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings, is available.

16. A bare perusal of the judgment dated 26.11.2012 (Annexure A-12) of the criminal court would reveal that the applicant was not honourably acquitted but he was acquitted on the ground that the

version of prosecution has not been able to stand scrutiny. There are loopholes and lapses and unfilled gaps. There are doubts, reasonably imperative which crept in and have to be taken note of. Hence, if the applicant was acquitted on the basis of indicated doubts, then to our mind, the provisions contained in Rule 12 of relevant rules cannot be applied in the present case. Moreover, as mentioned above, the charge under Section 354 and 451 before the criminal court were entirely different than the allegation of under the influence of liquor for which the applicant was punished. In other words, the charges before the criminal court were entirely different than the allegation in the departmental enquiry.

17. This is not the end of matter. It is not a matter of dispute that impugned punishment order (Annexure A-1) was passed way back on 02.05.2011 by the competent authority, whereas the applicant was acquitted in the criminal case on 26.11.2012. Meaning thereby, the judgment dated 26.11.2012 of acquittal was not in existence when the impugned punishment order was passed against the applicant on 02.05.2011. Thus, seen from any angle, the protection of Section 12 of the relevant rules would not be applicable to the present case, as contrary urged on behalf of the applicant.

18. Now, adverting to the next submission of learned counsel that since the applicant consumed the liquor while he was not on duty, so he cannot be held guilty for dereliction of duty under the influence of liquor. In this regard, it may be added here that even before the inquiry officer the applicant has admitted in so many words that he was on surveillance duty in the area where the house of Darkasha Parveen, wife of Anwar Ahmed existed and he took him

to his house. Not only that, even in the main OA it has been specifically pleaded that he was present in the house of Darkasha Parveen, wife of Anwar Ahmed, to collect information, to keep surveillance in performance of his official duty. On the other hand, there is positive evidence on record that he has consumed liquor in the house of complainant while on duty. Even the time, date and place of occurrence has been admitted by the applicant. Therefore, this argument appears to be an afterthought, and cannot be accepted.

19. Seequally, the next argument of learned counsel that there was no evidence on record to prove the charge that the applicant was under the influence of liquor again cannot be accepted. As indicated hereinabove, the EO recorded the findings of facts based on the evidence including medical evidence that the applicant was under the influence of liquor at the relevant time, date and place in the house of Darkasha Parveen wife of Anwar Ahmed which was rightly accepted by the competent authority, while passing punishment order.

20. Possibly, no one can dispute that jurisdiction of this Tribunal to entertain with such findings of competent authority based on record is very limited. The Tribunal cannot interfere with the findings of competent authority when they are not arbitrary or perverse. The power to impose penalty on a delinquent employee is conferred on the competent authority by the relevant rules made under the proviso to Article 309 of the Constitution. If the findings of the competent authority are consistent with the evidence, rules and in accordance with principles of natural justice and punishment would meet the ends

of justice, are the matters exclusively within the domain of the competent authority. Equally, it is now well settled principle of law that if the penalty can lawfully be imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty, unless it is *mala fide*, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of competent authority is based on evidence.

21. Therefore, taking into consideration the totality of the facts and circumstances, as discussed hereinabove, we are of the firm opinion that no fault can possibly be traced with the findings and punishment imposed on the applicant by the competent and appellate authorities. Thus, contrary arguments of learned counsel for applicant "*stricto-sensu*" deserve to be and are hereby repelled under the present set of circumstances of the case.

22. No other point, worth consideration, is either urged or pressed by the learned counsel for the parties.

23. In the light of aforesaid reasons, as there is no merit, therefore, the instant O.A is hereby dismissed as such in the obtaining circumstances of the case. No costs.

(Nita Chowdhury)
Member(A)

(Justice M.S.Sullar)
Member(J)

Rakesh