

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3615/2012

Reserved on : 25.01.2017
Pronounced on : 01.02.2017

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

Ct. Anil Kumar,
(7922/DAP) (Earlier 749/N)
(PIS No.28931497)
S/o Shri Saudan Singh,
R/o House No.1551, Gali No.44,
B-Block, Hanuman Kunj,
Sant Nagar, Burari, Delhi
Group 'C', Aged 42 years.

.. Applicant

(By Advocate : Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
MSO Building,
New Delhi.
2. Joint Commissioner of Police,
Northern Range, Delhi
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
MSO Building,
New Delhi.
3. Deputy Commissioner of Police,
North District, Delhi
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
MSO Building,
New Delhi. .. Respondents

(By advocate: Mrs. Sumedha Sharma)

ORDER**By Mr. P.K. Basu, Member (A)**

A departmental enquiry was commenced against the applicant vide memorandum dated 23.06.2008. The gist of allegation was as under:

"It is alleged against Constable Anil Kumar No.749/N that on 30.4.2008 while posted at PP Burari, he was detailed for Beat duty in Harit Vihar vide D.D. No.18 dated 30.4.2008 P.P. Burari, P.S. Timar Pur. During his duty hours a large gathering of 'C' Block Harit Vihar agitated against him & local residents alleged that Constable Anil Kumar No.749/N who is a beat constable, came in drunken condition in the colony including ladies. He was removed from there. Later on in the evening a PCR call was received and again it was alleged that he was misbehaving with the local residents in drunken state. He was searched in the beat by the staff of PP Burari, but could not be found, thus absent from duty. All these facts were lodged in D.D. No.36 dated 30.4.2008, P.P. Burari. Next day he was nabbed near to his residence and was sent for medical examination & facts in this regard were also lodged in D.D. No.35 dated 01.05.2008 P.P. Burari P.S. Timar Pur."

An enquiry was held and in the enquiry, eight prosecution witnesses were examined and the Enquiry Officer came to the conclusion that the charge that the defaulter constable (applicant), while on duty, misbehaved with public under intoxication is proved without any reasonable doubt.

2. The Disciplinary Authority after examining the representation dated 29.05.2009 of the applicant as well as hearing him in orderly room, awarded the punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay. In

this order, the Disciplinary Authority has also stated that the applicant confessed his guilt and assured that he will not repeat such type of mistake in future.

3. The applicant filed an appeal dated 27.11.2009, which was examined by the Appellate Authority, in which his basic defence is that on the date of occurrence, i.e. on 30.04.2008, he was mentally disturbed due to certain domestic problems and the alleged act was committed by the appellant due to mental disturbance and he was not under intoxication. The Appellate Authority vide order dated 25.01.2012 rejected the appeal and in his order, he also stated that the applicant was heard in person in orderly room wherein he pleaded that he would not repeat such a conduct and requested for a lenient view in the matter.

4. The applicant has challenged these orders and sought the following relief(s):

- “(a) Quash and set aside the impugned orders as referred/mentioned in Para-1 of OA and’
- (b) Restore the forfeited service of the Applicant and to grant all the consequential benefits to the Applicant viz. Promotion/Seniority, difference in pay along with interest @ 18% p.a. etc. And
- (c) Direct the respondents to treat period of suspension qua the Applicant as period spent on duty for all intents and purposes. And
- (d) Award cost in favor of the Applicant and against the respondents. And/or

(e) Pass any further order, which this Hon'ble Tribunal may deem fit, just equitable in the facts and circumstances of the case."

5. The grounds for making the above claims are as follows:

(i) The applicant was not provided with the list of witnesses along with the summary of allegations, which is in violation of Article 16(i) of Delhi Police (Punishment & Appeal) Rules, 1980. This action is also against the law of the land and in violation of Apex Court judgment. It is trite law that when a thing is prescribed to be done in particular manner then that thing has to be done in that manner itself.

(ii) The charge leveled against the applicant is absolutely vague and indefinite. In this regard, it is stated that Enquiry Officer's conclusion that the applicant was in an intoxication state, is without any evidence as the medical report did not conclude that he was intoxicated.

(iii) The bald allegation of using filthy language is not sufficient to punish the applicant unless and until it is mentioned as to what words had been spoken by the applicant.

(iv) Both the Enquiry Officer and the Disciplinary Authority have based their findings on surmises and conjectures.

(v) The Enquiry Officer has also found the applicant guilty of manhandling (which was not even part of the charge).

(vi) The Disciplinary Authority came to the conclusion that the PWs had been won over by the applicant without any evidence on record to suggest this. In this regard, he relied on judgment of the Hon'ble Punjab & Haryana High Court in CWP No.14674/1994 dated 10.04.1996 in **Ram Phal vs. Govt. of Haryana and others**, in which Hon'ble High Court held as follows:

“Assuming that the petitioner had won over the witnesses the question still arises as to on what evidence the Punishing Authority came to the conclusion that the charges framed against the petitioner, subject-matter of enquiry against him, stood proved. If the witnesses had deposed against the petitioner and yet the Enquiry Officer had come to a conclusion that the charges levelled against the petitioner were not proved, the Punishing Authority, by holding such reasons to be incorrect or perverse, could come to a different conclusion but, as mentioned above, while returning a finding of guilt against the petitioner, no evidence whatsoever was taken into consideration. If the petitioner had actually won over witnesses, it might be subject-matter of second enquiry against him but insofar as the charges, subject matter of enquiry against the petitioner, are concerned, the same could be proved or disproved on the basis of evidence only.”

6. Learned counsel for the respondents stated that both before the Disciplinary Authority and before the Appellate Authority, the applicant had accepted his guilt and pleaded for a lenient view. Secondly, it is stated that, in case, he was mentally disturbed, he should have intimated his seniors or doctors. Thirdly, he did not cooperate and, in fact, he ran away from the place of occurrence, as a result of which, his medical examination got delayed. This is, perhaps, the reason why intoxication/alcohol was not found in the report of MLC by the doctors. Out of the eight PWs, five PWs, who

were private citizens retracted from their statements. PW-6 was just a formal witness to prove DD entries, PW-7 is the officer, who attended the PCR calls recorded the statements and got defaulter Constable medically examined and PW-8 who went to the spot and collected the complaint from the concerned persons and lodged the DD entries. According to the learned counsel, this clearly shows that the applicant had been able to influence the private PWs to get statement in his favour.

7. Heard the learned counsels and perused the documents, pleadings as well as judgments.

8. The incident started with a large gathering of 'C' Block Harit Vihar residents agitating against the applicant with local residents alleging that the applicant, who is a beat constable, came in a drunken condition in the colony in the day time and misbehaved with the local residents including ladies. He was removed from there. Again, in the evening a PCR call was received and it was alleged that he was misbehaving with the local residents in a drunken state. Thereafter, he could not be found in his beat or in the police station and was nabbed near his residence much later and sent for medical examination. There are D.D. entries to this effect. At the time of the incident, the local residents made a complaint against him. Both before the Disciplinary Authority as

well as Appellate Authority, he admitted to his guilt and pleaded for mercy. The Enquiry Officer made a detailed enquiry and came to the conclusion that based on the preponderance of probabilities in this case, there is sufficient evidence on file to prove the charge of misbehaving and manhandling with public under intoxication against the defaulter. The preponderance of probability suggested is also from the conduct of the applicant. It is not that it is a one-off incident. Firstly, in the morning, there is an agitation by the locals about his intoxication during his official duty and misbehaving with the residents including ladies when he is removed, after such conduct, from beat duty. He again lands up in the evening and the residents complained that again he was intoxicated and misbehaved with the people. Thirdly, if he was not intoxicated and had not misbehaved, as he claims, there was no reason for him to vanish from the site or the police station. He should have subjected himself to a medical examination, then and there. Even thereafter he does not voluntarily come to the police station and he was nabbed somewhere near his residence.

9. Pitted against such recorded evidence is his defence that five of the residents, who are prosecution witnesses, have changed their stand, to which the Disciplinary Authority has rightly concluded that these witnesses have been influenced. We also do not find much weight in the arguments of the learned counsel for the

applicant on the use of the word 'manhandling' etc. as what is relevant is that this Constable, while on beat duty, twice during one day, was caught misbehaving with locals in an intoxicated condition, which is a very very serious offence for a policeman and the respondents have conducted an enquiry in a very fair and just manner and also awarded a punishment, which is commensurate with the misconduct of the applicant. We see no reason to interfere the same. The O.A. is, therefore, dismissed. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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