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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

OA No.1929/2003

New Delhi, dated this the 12th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Ajay Kumar,
Constable of Delhi Police
(PIS No.28850379)
R/o Vill. & P.O. Dahina,
P.S. Khol, Distt. Mohinder Garh,
Haryana.Applicant

(By Advocate: Shri Anil Singhal)

versus

1. GNCT through
Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi
2. Joint Commissioner of Police,
Armed Forces, New Police Lines, Delhi.
3. DCP (III-Bn.DAP),
Vikas Puri, New Delhi.

... Respondents

ORDER (ORAL)

Justice V.S. Aggarwal:-

Applicant (Ajay Kumar) by virtue of the present application seeks quashing of the order of penalty imposed on him and to restore his reduced pay and withheld increments besides treating the period of suspension and intervening period from dismissal to reinstatement as spent on duty.

2. The applicant faced departmental action and initially the following summary of allegations had been

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served on him:-

"It is alleged against Constable Ajay Kumar No. 8674 DAP that while posted in III Bn. DAP at E.D. lockup on 1.10.1996 for production duty, he was handed over the lawful custody of UTP Gurdeep Singh @ Deepa S/o Sangat Singh involved in many heinous cases to produce him in the Court of Smt. Sharda Aggarwal AZA. He noted the Court after making his departure vide D.D./ No.7 at 10.40 am and found that the Court is busy in disposing off the bail matters, he opted to sit outside the court on chairs with the UTP in his custody. While sitting, he allowed two unknown and unauthorised persons to meet the UTP and the UTP then passed a chit to one of the visitors bearing some telephone number who in turn went to ring some secret message to the UTP to someone the other remained busy in talking with the UTP during this, the UTP took out two toffees from his pant and one was consumed by himself and the other by the constable followed by smoking of a 'Bidi'. No sooner, he became giddy headed and started staggering. A little after he along with the UTP went to nearby toilet to quench their thirst, wherefrom the UTP went slipped away leaning him in an unstable condition and SI Omkar Singh also found him staggering without UTP in the Court premises. He was supposed to exercise utmost care and vigilance on the UTP in his lawful custody and should have taken thorough search for any objectionable article in his possession and further no unauthorised access of unknown visitors should have been allowed, but he failed to do so.

The above act on the part of Constable Ajay Kumar amounts to grave misconduct, indiscipline and dereliction in discharge of his official duties and as such renders him liable to be dealt with U/S 21 of D.P. Act, 1978 (P&A Rules, 1980)".

The inquiry officer had submitted the report which resulted in imposition of penalty on the applicant. His appeal was dismissed. Suffice to say that the disciplinary authority on that occasion had come to the conclusion that there was no evidence to prove the charge of consuming the toffee by the applicant provided to him

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by the under trial prisoner. However, the disciplinary authority instead of exonerating him had sent back the file to the inquiry officer to examine the investigating officer of the criminal case and certain witnesses. As a result of the submission and re-submission of the report, it was finally opined by the inquiry officer that the main charge was not proved but some different charge had been established. The applicant preferred OA No.2129/2001. This Tribunal had quashed the penalty imposed recording that if the disciplinary authority so liked, it may proceed against the applicant after framing a specific charge against him. After the remission of the case, the following charge was framed:-

I, Insp. Radha Raman, III Bn.DAP charge you Const.Ajay Kumar No.8674/DAP that on 1.10.96, while posted in III Bn.DAP for production duty at E.D. Lock-up, you were detailed for the custody over UTP Gurdeep Singh @ Deepa s/o Sangat Singh, who was involved in many heinous cases, to produce him in the court of Smt.Sharda Aggarwal, ASJ. You visited the court after making your departure vide D.D.No.7 at 10.40 A.M. and finding that the court is busy in disposing off bail matters, you opted to sit outside the court on chairs with the aforesaid UTP in your lawful custody. While sitting, you allowed meeting of two unknown and unauthorised persons with UTP without any permission of the court. During the unauthorised meeting, the UTP escaped from your lawful custody taking advantage of your negligence.

You were expected to exercise utmost care and vigilance for the safe custody of such an interstate criminal but you miserably failed to do so and the exhibited very grave and higher order of indiscipline. Due to this very omission on your part, the UTP escaped from your lawful custody.

The above act on the part of you Const.Ajay Kumar No.8674/DAP amounts to grave misconduct and dereliction in discharge of your official duties and as such renders you liable for disciplinary action and punishment as envisaged under section 21 of D.P.Act, 1978."

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The disciplinary authority returned the finding that the charge had been proved. The applicant was expected to exercise utmost care and vigilance for the safe custody of under trial prisoners which he failed to do so. Accepting the said report, the disciplinary authority imposed the penalty of forfeiture of five years approved service permanently on the applicant entailing reduction in his pay from Rs.3575/- to Rs.3200/- in the pay scale of Rs.3050-4590. His suspension period and the period of dismissal was treated as period not spent on duty. The appeal preferred by the applicant has been dismissed. Hence the present application.

3. The learned counsel for the applicant during the preliminary hearing urged:

- (a) that the charge framed was the same as had earlier been framed;
- (b) under the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules"), the charge could only be framed after recording of the evidence and in the present case, no such evidence had been recorded and, therefore, it has to be quashed; and
- (c) no permission had been obtained of the Additional Commissioner of Police under Rule 29

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of the Rules before initiating the disciplinary proceedings.

4. We have heard the learned counsel for the applicant and in our considered opinion, the submissions so made are without merit.

5. Earlier, the applicant had faced disciplinary proceedings pertaining to escape of under trial prisoner primarily on the ground that two unauthorised persons were allowed to meet the said prisoner. A chit was passed to one of the visitors. The under trial prisoner had taken two toffees, one was consumed by him and the other by the applicant. The applicant became giddy and started staggering. He along with the under trial prisoner went to nearby a toilet and the under trial prisoner slipped away.

6. The present charge has nothing to do with the consumption of the toffees. It was a simple charge that the applicant was to produce the under trial prisoner in the court of Additional Session Judge. He allowed two unknown and unauthorised persons to meet the under ~~trial~~ ^{Trial} prisoner who escaped and this was taken as dereliction to duty and grave misconduct.

7. It is obvious from the aforesaid that the tenor and nature of the charges are different. The only common factor is the escape of the under trial prisoner

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for which presently, the applicant has been held guilty of dereliction of duty and misconduct because he did not show high discipline. There is no charge of consumption of the toffees which made the applicant guilty of misconduct but the same is of allowing unauthorised persons to meet the under trial prisoner. Therefore, the plea that the charge earlier framed and now considered are the same is without any basis.

8. So far as the second contention that under the Rules, first the evidence is recorded and thereafter the inquiry officer can frame the charge is concerned, once again the contention in the facts of the present case must fail. It is true that under the Rules firstly the evidence is recorded and thereupon if the inquiry officer considers necessary, he can proceed to frame a formal charge and explain it to the delinquent. However, as we have already noted above, earlier the applicant had filed an original application in this Tribunal. The same had come up for consideration and this Tribunal had quashed the penalty imposed but permitted that authorities may proceed against the applicant after framing a specific charge. In other words, the proceedings had ^{to} commenced ~~from~~ the stage the charge was to be framed. The order passed by this Tribunal has become final and, therefore, cannot be questioned. There is no irregularity or illegality in this regard.

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9. The last submission made at the Bar was pertaining to Rule 29 of the Rules. It deals with matters when there is escape of prisoners from police custody. Sub-rules (1) and (3) to Rule 29 reads as under:-

"29. Suspension in cases of escape of prisoners from police custody:- (1) if a prisoner escapes or is rescued from police custody, the police officer immediately responsible, shall forthwith be suspended from duty. A searching departmental enquiry shall at once be held by or under the orders of the Deputy Commissioner of Police. The object of this enquiry shall be the elucidation of all circumstances connected with the escape or rescue and the determination of issue whether the escape or rescue could have been prevented by the exercise of such vigilance and courage on the part of the Police Officer immediately responsible as might reasonably have been expected, and whether it was rendered possible or facilitated by any neglect or omission of duty on the part of any superior police officer.

(3) If the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Section 221, 222 or 223 I.P.C. has been committed, the police officer concerned shall be prosecuted in a criminal court, unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally. If the enquiry establishes a breach of discipline or misconduct not amounting to an offence under any of the sections of the I.P.C. mentioned above, the case shall ordinarily be dealt with departmentally. The criminal prosecution under this rule of an upper subordinate shall not be undertaken without the sanction of the Additional Commissioner of Police.

Dismissal or removal from service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner."

In the present case, there was a searching enquiry and it

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appears from the order passed by the appellate authority that even permission of the Senior Additional Commissioner of Police had been obtained. It is not the case of the applicant that this fact so recorded by the appellate authority is incorrect. Therefore, very basis of the argument need not be probed further.

10. No other argument has been raised.

11. Resultantly, the application being without merit must fail and is dismissed in limine.

Announced.

S.K.Naik

(S.K.Naik)
Member (A)

V.S.Agarwal

(V.S.Agarwal)
Chairman

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