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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2914/2003

New Delhi this the 13th day of August, 2004

Hon'ble Mr. Justice V. S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Const. Parmod Kumar, 1431/E,
C/O Ch. No. 311-A,
Western Wing, Tis Hazari Courts,
Delhi-110054.

..Applicant

(By Advocate Shri Sachin Chauhan)

VERSUS

1. Govt. of NCT of Delhi
Through its Secretary,
New Sachivalaya I.P. Estate,
New Delhi.

2. Jt. Commissioner of Police,
New Delhi Range, Delhi.

3. Additional D.C.P.,
East Distt. Delhi.

..Respondents

(By Advocate Sh. Ram Kwar)

O R D E R

(Hon'ble Shri S.A. Singh, Member (A))

Applicant is Constable working in Delhi Police. A departmental proceeding was initiated against him on the ground of gross misconduct, negligence, carelessness, dereliction in the discharge of his official duties. A major penalty of withholding of his next service increment for a period of two years with cumulative effect was imposed. Appellate Authority rejected the appeal of the applicant.

2. Aggrieved by this, the applicant has filed the present O.A seeking setting aside the order of punishment and quashing of the order of the appellate authority and findings of the inquiry. The brief facts

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of the case are conveniently delineated by reading of the charge which reads:

"I, Satyavir Singh, Inspr. DE Cell, Delhi charge you, Const. Pramod Kumar, 1338/E that:-

1. On 10.4.99 while you were posted at PS Trilok Puri, you were detailed for duty at Noida 'T' point from 8 AM to 8 PM. You made your departure for duty vide DD No. 2-B dt. 10.4.99 along with a Wireless Set and Revolver No. 750 DP loaded with five live cartridges. At about 9 PM, HC Dharamvir Singh No. 359/E went to the picket to confirm his duty who found you under the influence of liquor with one public person and a Maruti van was also stationed on the road near the picket. HC Dharamvir Singh made enquiry about HC Hari Singh from you on which you told him that after handing over the revolver and wireless set to him, HC Hari Singh had left the spot.


2. When HC Dharamvir Singh reached again at the picket at about 10.15 PM for his duty, he found you absent along with wireless set and revolver. In this regard HC Dharamvir Singh informed the Duty Officer, HC Sohanvir Singh through Const. Ram Kishan, 1338/DHG. The Duty Officer confirmed the facts by deputing Const. Dinesh Kumar, 1503/E and Const. Anil Kumar, 1084/E, who were on duty on Motor Cycle to Noida 'T' point and subsequently to your house i.e. B-1/11, Mayur Vihar Phase-III where you returned the wireless set and reported that revolver was with HC Hari Singh No.204/E. On 11.4.99 at about 9.15 AM Shri Ashok Wason S/O Shri C.L.Wasan R/O 1-50, Lajpat Nagar-II New Delhi informed the duty officer that you had left the revolver in his maruti car last night. On receipt of this information SI Rajesh Kumar went to Lajpat Nagar and collected the revolver and 5 live cartridges and the same were deposited in Malkhana".

3. The applicant has challenged the order on the ground of hostile discrimination as no enquiry has been initiated against equally responsible persons, namely, Head Constable Hari Singh and HC Dharambir Singh.

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4. Moreover, the order of the disciplinary authority is vitiated because there is no application of mind and reliance has been placed upon the deposition of ASI Hari Singh and HC Dharambir Singh co-delinquents. Further there is no evidence that the applicant had been issued the revolver. The revolver had been issued to HC Hari Singh, and if there is any negligence then it was on the part of HC Dharambir Singh and not on the part of the applicant. There is also no evidence that the applicant has consumed liquor, because no medical examination was done.

5. The enquiry has been held in violation of Rule 15 (3) and 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980 because the previous recorded statement of Shri Ashok Wason, public witness had been relied upon by the E.O. The previous recorded statement of public witness can only be relied upon if the witness is not present. In the present case Shri Ashok Wason has deposed, therefore, ~~the~~ the previous recorded statement can not be relied upon. The public witness Shri Ashok Wason in his cross examination has stated that another police person was sitting on the seat under which the revolver was lying and applicant was sitting on the rear seat. However, enquiry officer has recorded that Shri Ashok Wason gave information at PS Trilokpuri that the revolver was left by applicant under the influence of alcohol in his car with him. Further, in the cross examination Shri Wason has stated that the applicant had not taken alcohol on 10.9.2003 but the E.O. has stated that he was under the influence of



alcohol. In view of these infirmities punishment order needs to be dismissed.

6. The respondents have contested the case and have put forth that HC Hari Singh (now ASI) after completion of his duty handed over the revolver and wireless set to the applicant and that when HC Dharambir Singh went to picket at 9.00PM to confirm his duty, he found the applicant taking liquor with one outside person. At about 10.15 pm when he went for his duty, he found that the applicant was absent along with revolver and wireless set. Constable Dinesh Kumar and Constable Anil Kumar who were on Motor Cycle duty confirmed this as the wireless set was returned by the applicant to Constable Dinesh Kumar when the applicant was contacted at home. Regarding the revolver the applicant has stated that it was with HC Hari Singh. However, the revolver was found by public witness Shri Ashok wason in his motor car. He informed PS, Trilokpuri that the applicant had left the revolver in his Maruti car. The same was collected and deposited in malkhana by SI Rajesh Kumar. Further the departmental enquiry is based on evidence on record and there is no violation of Rule 15(3) and 16(3) during the DE proceeding and thus the plea put forth by the applicant is baseless and untenable.

7. We have heard the learned counsel for the parties and gone through the documents on record. The main argument of the applicant for quashing of the

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punishment order is that it is a case of no evidence. There was no evidence that he had consumed alcohol or that he was responsible for loss of the revolver and wireless set. The revolver and wireless set had been issued to HC Hari Singh and if there is any negligence it is on the part of HC Hari Singh.

8. A case of no evidence would have to be established by showing that there is no evidence on record to support a findings or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. We find that there is statement of HC Dharambir Singh that when he had gone to NOIDA to confirm his duty he found that the applicant with a public person and was consuming liquor inside the picket. There is also a statement of SI Rajesh Kumar that Shri Ashok Wason had informed over the telephone on 10.4.1999 that the applicant had left his revolver in his car. He along with Constable Shri Amrish had recovered the revolver along with 5 live cartridges from Shri Ashok Wason and desposited them in Malkhana of P.S., Trilokpuri. There is statement of Constables Shri Anil Kumar and Shri Dinesh Kumar that they were directed to recover the wireless set and revolver from the applicant. They were able to recover the wireless set from his home and the applicant informed that the revolver was with HC Hari Singh (now ASI).


9. From the above, it is clear that it is not a case of no evidence. In the case of Government of Tamil


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Nadu Vs. A. Rajanian (1995(2)SLJ 216) it has been held that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority.

10. In view of the ratio laid down in the above case we see no reason to interfere. Applicant has also put forward that it is not admissible to rely upon the statement of co-delinquent HC (ASI) Hari Singh and HC Dharambir Singh for proving the charge. We find that the co-delinquents appeared in the enquiry and the applicant was given full opportunity for their cross examination. Therefore, we cannot agree with this limb of argument of the applicant.

11. In view of the above, we find no reason to interfere and accordingly, the OA is dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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