

HIGH COURT OF DELHI: NEW DELHI

+ Writ Petition (Civil) No. 3356/2001

Judgment reserved on: 13th October, 2009
% Judgment delivered on: 23rd October, 2009

SATBIR SINGH Petitioner
Through: Mr. Arun Bhardwaj and
Ms. Manpreet Kaur, Advs.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Darpan Wadhwa, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Not necessary
3. Whether the judgment should be reported
in the Digest? Not necessary

A.K. PATHAK, J.

1. Petitioner has filed this writ petition against the order dated 15th February, 2001, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) in O.A. No. 114/2000.

By this impugned order, Tribunal dismissed the O.A. filed

by the Petitioner against the order of dismissal from service passed by the Disciplinary Authority.

2. Factual matrix of the case, as emerging from the record, is that a departmental enquiry was initiated against the Petitioner, a constable in the Delhi Police on the following charge:-

“On the night intervening 4/5-6-97 Constable Satbir Singh No. 592/SW (PIS No. 28823615) alongwith one Constable (DHS) Braham Dev, No. 7328/DHG was detailed for duty at special picket near Sanjay Park, Laxmi Bai Nagar vide DD No. 79-B dated 4.9.97. When checked by night checking officer SI Vinod Pal No. D/3377 accompanied by constable Brijesh No. 900/SW, Constable Satbir Singh No. 592/SW was found sleeping at bus stand. DHG Braham Dev, No. 7328/DHG tried to wake Constable Satbir Singh up but he did not bother to sit. When Ct. Satbir Singh was enquired about his sleeping on duty, he admitted that he had consumed alcohol (wine). He further surcasted that in the past he had repeatedly been medically examined and so does not care for the same. On this, Constable Satbir Singh was medically examined at Safdarjung Hospital vide MLC No. 129727 dated 5.9.97 at about 2.05 AM. The Dr. on duty Shri M.A. Ansari, Sr. Resident Ortho Deptt. SJH, conduct his medical examination and opined smell of alcohol present from his mouth. Constable

Satbir Singh further emboldened to say that he has completed 15 years of service and has seen many officers like the SI coming and going.”

3. Initially, the Petitioner participated in the enquiry proceeding and cross examined some of the witnesses. However, subsequently he stopped appearing and was proceeded against ex-parte. On the basis of evidence adduced before him, Enquiry Officer concluded that the charge against the Petitioner was proved and submitted the report to the Disciplinary Authority.

4. Show cause notice was issued to the Petitioner along with the findings of Enquiry Officer and he was asked to make his representation. It was also stated thereafter that he can appear before the Disciplinary Authority on 10th June, 1999, if he so desired. Petitioner submitted written submission but did not avail the opportunity of hearing.

5. Disciplinary Authority concurred with the findings of the Enquiry Officer and passed order dated 11th June, 1999, thereby removing the Petitioner from service with immediate effect. Aggrieved by this order, Petitioner preferred an

appeal before the Appellate Authority but the same came to be dismissed vide order dated 11th November, 1999.

6. Dissatisfied with the aforesaid orders, Petitioner approached the Tribunal but without any success.

7. Before the Tribunal, it was argued by the Petitioner that the summary of allegations did not contain gist of evidence proposed to be led during the enquiry which was in utter violation of Rule 16 (i) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as Rules) and this itself vitiates the penalty order; there was no evidence against the Petitioner that he had consumed liquor as no blood test was undertaken, inasmuch as only testimony of the doctor was available in this regard, who otherwise stated that Petitioner was fully oriented; without making any attempt to serve the notice on the Petitioner he was proceeded against ex-parte, which action was in violation of Rule 18 of the Rules; Appellate Authority also followed a wrong procedure for confirming the Disciplinary Authority's order without making any reference to the contentions raised by the Petitioner in his appeal;

Disciplinary Authority did not record any finding with regard to the grave misconduct or unfitness of the Petitioner before imposing severe penalty of removal from service which was in violation of Rule 8 (a) and 10 of the Rules.

8. Tribunal did not find any merit in the above arguments of the Petitioner. Tribunal held that the competent authority had communicated summary of allegations along with the list of witnesses, which was sufficient compliance of Rule 16(i) of the Rules, inasmuch as gist of the evidence to be led by the witnesses was not required to be supplied. Petitioner was rightly proceeded against ex-parte since he stopped appearing during the enquiry, as such the Petitioner cannot make any grouse in this regard. Notice of personal hearing was also given to the Petitioner one month in advance, but he did not avail the same. Petitioner's plea that he sought postponement of hearing by way of communication sent through registered A.D. post accompanied with medical evidence was not supported by material on record, inasmuch as, only a receipt of telegram was produced. In fact, Petitioner had tried to mislead the

Tribunal by suggesting that request for postponement of hearing was made through registered A.D. post accompanied with the medical certificates. Tribunal concluded that the proceedings were conducted by the Enquiry Officer, by following due procedure and the findings recorded by him, were based on evidence. As per Tribunal, both the Disciplinary Authority as well as Appellate Authority had rightly concluded that the Petitioner was not fit to be retained in a disciplined force like Delhi Police. With these observations, O.A. of the Petitioner was dismissed.

9. Petitioner has now approached this Court for redressal of his grievance by filing the present writ petition.

10. We have heard the learned counsel for the parties and perused the material on record. On the basis of evidence adduced in the enquiry proceedings, Enquiry Officer, Disciplinary Authority as well as Appellate Authority have arrived at a conclusion that, from the material on record it was established that the Petitioner along with another Constable was detailed for patrolling duty on 4th September

1997, but was found sleeping at the bus stand under the influence of liquor. He was found not performing duty assigned to him. Dr. M.A. Ansari opined that the smell of alcohol was present in the mouth of Petitioner. That apart, Petitioner misbehaved with SI Vinod Pal by uttering “he had spent fifteen years in the service and had seen many SI coming and going.” Petitioner had no respect for the seniors. Tribunal has accepted this finding. We find no reason to interfere with this concurrent view taken by the above authorities based on the evidence available before them.

11. We cannot go into the merits of the case and reappraise the evidence and take a different view than what has been taken by the above authorities. Power of judicial review of the Court/Tribunal is limited in this respect. In such like matters, court has not to reappraise the evidence to form a different view as if hearing an appeal. Court can only interfere, if the Petitioner is able to demonstrate that the enquiry was conducted in violation to the rules or that, principles of natural justice were not followed resulting in

miscarriage of justice. Court/Tribunal can also interfere with the penalty order in case findings are based on no evidence. Adequacy or quality of evidence has not to be gone into in such like cases.

12. Learned counsel for the Petitioner has vehemently contended that proper opportunity was not granted to Petitioner to defend his case. While the enquiry was pending, Petitioner was transferred to Vasant Kunj. No notice was issued to the Petitioner intimating next date of hearing, consequently, he could not appear in the enquiry proceeding. Petitioner was wrongly proceeded against ex-parte. We have perused the material on record and we find that this contention of the Petitioner is contrary to the record. Initially, Petitioner participated in the enquiry proceeding and was well aware of the date(s) of hearing fixed by the Enquiry Officer. Besides this, we find that the order dated 20th January, 1999, passed by the Additional Deputy Commissioner of Police, South West, New Delhi, whereby Petitioner was proceeded against ex-parte in consonance with the Rule 18(2) of the Rules was duly served on the

Petitioner on 2nd February, 1999. Perusal of the said order shows that opportunity was given to the Petitioner to appear in the proceedings even at subsequent stages till completion of the enquiry if he so desired. Petitioner has himself annexed a copy of this order at page No. 27 of the paper book which shows that he was fully aware of this order dated 20th January, 1999. In view thereof, Petitioner cannot make any grouse in this regard at this belated stage. If the proceedings were conducted ex-parte Petitioner has to blame himself for the same.

13. Learned counsel for the Petitioner has next contended that the Appellate Authority had taken extraneous matters into consideration, while deciding the appeal. Comments of the Disciplinary Authority as well as previous record of the Petitioner was also taken into consideration by the Appellate Authority without issuing any prior notice to the Petitioner in this regard. Previous record of the Petitioner was not part of the enquiry proceeding. It was made part of the charge framed against the Petitioner, therefore, could not have been taken into account. We are afraid that, this

contention cannot be raked up by the Petitioner for the first time before us. Petitioner did not raise any such argument before the Tribunal, during the hearing and no such discussion has been made in the impugned order in this regard. Besides this, we are of the view that previous bad record of the Petitioner was not the main reason for affirming the penalty order, passed by the Appellate Authority and only a passing reference was made in this regard.

14. Learned counsel for the Petitioner has then contended that Rule 22(b) of the Central Civil Services (Conduct) Rules, 1964, requires that a Government servant shall not be under the influence of any intoxicating drink or drug during the course of his duty and shall also take due care, that the performance of his duties at any time, is not affected in any way, by the influence of such drink or drug. According to him, in case it is shown that performance of the duties of a Government servant is affected by his being under the influence of any intoxicated drink or drug, only then such conduct of Government servant would amount to

misconduct. According to him, in this case, no such charge was framed against the Petitioner, that he was under the influence of liquor or that because of this, he failed to perform his duty. Merely because a person has consumed some liquor, by itself, would not mean that he was under the influence of liquor to such an extent that he would not be in a position to perform his duties. He has further contended that the Petitioner was having an unblemished record of fifteen years of service, therefore, such a solitary incident was not sufficient enough to impose penalty of dismissal from service upon the Petitioner. As against this, learned counsel for Respondent has contended that Rule 22 debars a Government servant from even consuming alcohol on duty. Petitioner was assigned patrolling duty. Instead of doing his job diligently, he consumed liquor and slept at the bus stand and when he was confronted against this improper act by his superior namely SI Vinod Pal, Petitioner misbehaved with him by saying that several officers like the SI had come and gone during his fifteen years of service. All the above acts of the Petitioner have to be considered cumulatively to frame an opinion as to whether the same

tantamount to misconduct on his part or not. Petitioner was a member of a disciplined force and was under a moral and legal obligation to protect the citizens by remaining alert while on patrolling duty, but he failed to perform his duty, inasmuch as, he was found sleeping after consuming liquor and when confronted with his inappropriate conduct by his superior, he misbehaved with him, inasmuch as, this act was grave enough to attract the penalty of removal from service.

15. We have considered the rival contentions of the parties and on this basis we do not find any force in the contention of learned counsel for the Petitioner.

16. Rule 22 of Central Civil Services (Conduct) Rules reads as under:-

“A Government servant shall-

- (a) Strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
- (b) Not be under the influence of any intoxicating drink or drug during the course of his duty and shall also take due care that the performance of his duties at

any time is not affected in any way by the influence of such drink or drug;

(bb) Refrain from consuming any intoxicating drink or drug in a public place:

(c) not appear in a public place in a state of intoxication;

(d) not use any intoxicating drink or drug to excess.”

17. A bare perusal of the aforesaid rule clearly shows that a Government servant is prohibited from consuming any intoxicating drink not only at the work place but also in a public place. Government servant is also debarred from appearing in a public place in a state of intoxication, besides using any intoxicated drink/drug in excess. Petitioner had consumed liquor on duty and was found sleeping at a public place and his this act violates the above quoted Rule. Accordingly, the argument of the learned counsel is contrary to the mandate of Rule 22 of the Central Civil Services (Conduct) Rules, 1964. Besides this, we are of the view that since the Petitioner had consumed liquor, it cannot be said that he was not under the influence of liquor. That apart, he was found sleeping while on

patrolling duty after consuming liquor. From this, it can be inferred that he was sleeping under the influence of liquor. When he was woken up by his superior officer, SI Vinod Pal, instead of being apologetic he misbehaved with him. In our view, cumulative effect of the said acts of the Petitioner tantamount to grave misconduct on his part, affirming penalty of removal from service.

18. In ***State of Punjab and Ors. vs. Ram Singh Ex. Constable*** reported in ***AIR 1992 SC 2188*** Supreme Court in para Nos. 5 and 8 held as under :-

5. "Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it

seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

8. “The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty; while on duty he drunk alcohol heavily and became uncontrollable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and remain in the house. But being not be a the disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty. The fact is that the respondent after having had heavy drink, was seen roaming or wandering in the market with service revolver. When he was sent to the doctor for medical examination he abused the medical officer on duty which shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. The authorities, therefore, were justified in imposing the penalty of dismissal. The Courts below failed to properly appreciate the legal incidence and the effect of the rules.” (emphasis supplied)

19. From the above, it is clear that misconduct cannot be defined precisely but can be inferred from the actions of a Government servant, keeping in mind the nature of duties and the establishment in which such a Government servant is employed. Petitioner being member of a disciplined police force was required to maintain strict discipline and it was obligatory on him to act in a manner befitting a member of police force. Petitioner being on patrolling duty, he was required to see that no unlawful activity was carried out in the area, where he was on patrolling duty. It was his bounden duty that tranquillity, law and order was maintained in the area of his jurisdiction and for this he was required to remain alert and keep a watchful eye around him. Instead of doing so, he consumed liquor and slept. Not only this, when he was confronted with his lax attitude by his superior, he misbehaved with him by saying that he had seen several officers like the SI coming and going during his service of fifteen years. The cumulative effect of acts committed by him, in our view, would certainly fall within the ambit and scope of grave misconduct.

20. In view of the above discussions, we do not find any reason to interfere with the order passed by the Tribunal.

21. The writ petition is dismissed being devoid of any merit.

A.K. PATHAK, J

MADAN B. LOKUR, J

OCTOBER 23, 2009

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