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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : March 03, 2015

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W.P.(C) 2659/2013

SH. SHIV RAJ SINGH

..... Petitioner

Represented by: Mr.Siddarth Joshi, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Mr.J.K.Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Challenge is to the order dated May 28, 2009 inflicting penalty of compulsory retirement upon the petitioner against which appeal filed was turned down on July 24, 2009 and the Revisional Authority refused to interfere with the penalty vide order dated November 05, 2009.

2. The admitted fact is that the petitioner, a Constable with the Railway Protection Force, was deployed for duty at the Dehradun Railway Station in the night shift on August 05, 2008. The duty had to commence at 20:00 hours on August 05, 2008 and had to last till 08:00 hours the next morning. The petitioner reported for duty. He was seen staggering, stumbling and mumbling. He had puke on his dress. ASI Devendra Kumar saw the petitioner and immediately reported the matter to the superior officers. He took the petitioner to Doon Hospital, Dehradun where the doctor on duty vide report Ex.11 proved during the inquiry, recorded that he examined the petitioner who was brought to the hospital by ASI Devendra Kumar and HC

Jaipal Singh and found that petitioner's speech was slurred, gait was staggering and smell of alcohol was present. A categorical opinion was penned that the petitioner had consumed alcohol and was under its effect.

3. The petitioner was placed under suspension on August 12, 2008. A charge memorandum bearing No.DAR/12-RPF/153/MB/08 under Rule 153 of RPF Rules 1987 was served upon him on August 21, 2008 listing the following Charge:-

'Statement of Articles of chargesheet under Rule 153 of Railway Protection Force Rules 1987 to Sh.Shivraj Singh S/o Sh.Balbir Singh, Constable, Railway Protection Force, Post-Dehradun.

Article-1 Charge

The Charge on him is that on dated 05/06.08.2008 his duty was in the night shift, 20:00 hrs to 08:00 hrs at Dehradun Station. When the night officer ASI Devendra Kumar done the follow on of all the staffs, then he found that his voice was tripping and his legs were also wobbling and the uniform was dirtied by him by purging on it and it seemed that he had consumed excessive alcohol. Again on re-examining him, the Post Commandant found him excessively drunk. Thereafter medical check up of him was conducted and the consuming of alcohol by him was confirmed in the medical report.

Thereafter the Constable did not appear on his duty and is absent from dated 05/06.08.08.

Thus on consuming the alcohol on the duty by him where a gross negligence of duties was done by him, whereby the image of force was tarnished and remained absent from duty. By this act he has violated the rules 146.2(i) (iii), 146.4 and 147 (ix) of the RPF Rules, 1987.'

4. The petitioner replied to the charge memorandum accepting that he was under the influence of alcohol but stated that he had taken a cough syrup prescribed by a private doctor named Dr.Avdesb Kumar Gupta. He claimed that the syrup had an alcohol base. He claimed that he consumed

the syrup in excess. He questioned his medical examination report authored by the doctor at Doon Hospital on the plea that the doctor had not taken his blood sample to test the level of alcohol in the blood.

5. The disciplinary authority appointed Insp.D.S.Chauhan as the Inquiry Officer to record evidence and submit a report.

6. At the inquiry seven witnesses : (i) Ct.Manoj Kumar PW-1, (ii) Lady Ct.Babita Dhabse PW-2, (iii) HC Rewti Poddari PW-3, (iv) Ct.Bijender Singh PW-4, (v) ASI Devendra Kumar PW-5, (vi) HC Jaipal Singh PW-6, and (vii) Insp.Pawan Vashisth PW-7 were examined.

7. Cumulatively read the testimony of the seven witnesses was, and in respect of which documents were proved, that the petitioner was detailed for duty at Dehradun Railway Station from 20:00 hours on August 05, 2008 till 06:00 hours the next morning and was seen dead drunk when he reported for duty. He was stammering. He was staggering. He had puked on his dress. His name was therefore not entered in the daily duty register and in place Ct.Bijender Singh was deputed for duty. The petitioner was taken to the Doon Hospital by ASI Devendra and HC Jaipal Singh under directions of the Post Commander. Petitioner being taken to the hospital and the report of the medical examination were entered in the daily diary register.

8. Report of the Inquiry Officer dated November 04, 2008, indicted the petitioner holding that the charge was proved. The same was supplied to the petitioner for his response. The response was considered by the disciplinary authority, who agreed with the report of the Inquiry Officer and disbelieved the defence that the petitioner had taken excessive quantity of a cough syrup. The disciplinary authority noted that in the past the petitioner was punished on June 26, 1996 for three months WIT, on December 23, 1996 for one year WIP, on February 02, 1998 for one year WIT, on February 11, 2001 for two

years WIP, on November 24, 2004 for three months WIT, on June 22, 2006 for two years WIP and on January 21, 2007 for working permanently for three years at two level lower than the present pay scale, on May 28, 2009. The penalty of compulsory retirement from service was inflicted.

9. The petitioner has challenged the impugned orders mainly on the ground that no blood test was conducted and that the medical examination report was manipulated by ASI Devendra Kumar.

10. Before dealing with the contentions urged before us, it needs to be highlighted that during the course of the inquiry, in a communication dated October 13, 2008 addressed to the Inquiry Officer, the petitioner stated that he was under a mental stress on account of the sudden demise of his mother and that he had consumed alcohol (*thoda khaa-pee liya tha*) and stated that for said reason he was unable to discharge his duty. Along with the communication, the petitioner enclosed a certificate dated August 06, 2008 issued by Pradhan of Gram Panchayat, Mahabatpur, Badaut (Baghpat) certifying that Smt. Balwanti, W/o Sh. Balbeer Singh had expired on July 17, 2008. We further note that in his response to the report of the Inquiry Officer the petitioner had taken said defence and had pleaded mercy on the plea that he had a wife, two daughters and a son to look after.

11. Thus, it is apparent that the petitioner had been taking vacillating stands, knowing fully well that the plea of having taken excess quantity of cough syrup was preposterous and would not justify the physical condition of the petitioner in which he was seen by his colleagues : stammering, staggering and with puke on his dress.

12. The argument that the doctor at Doon Hospital did not take the blood sample of the petitioner, would at best be a technical lapse by the doctor. There is sufficient and credible percipient evidence of the petitioner being

dead drunk spoken through the eyes of the seven prosecution witnesses.

13. In the decision reported as AIR 1996 SC 484 B.C.Chaturvedi vs. Union of India & Ors., it was observed as under:-

'13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel (1964) 1 LLJ 38 SC , this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.'

14. On the issue of reporting for duty in a drunken condition, on the subject of penalty, in the decision reported as AIR 1992 SC 2188 State of Punjab & Ors. vs. Ram Singh Ex.Constable, while dealing with the penalty awarded to a police officer on duty under state of intoxication, it was observed as under:-

'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 on duty, 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. '

15. Thus, we find no merit in the petition noting that the requirement of discipline has been blended with justice and mercy. The penalty is one of compulsory retirement from service.

16. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 03, 2015
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