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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11632/2018 & C.M. No. 44929/2018

DEVENDER KUMAR ..... Petitioner

Through: Mr. Vishal Chabra with Mr. Umesh Kumar, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondent

Through: Ms. Saroj Bidawat, Adv. for R-1
Ms. Rashmi Chopra with Ms. Uniti Anand and Ms. Asiya, Advs. for R-2 to R-4

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **31.10.2018**

1. The petitioner has preferred the present writ petition to assail the order dated 22.11.2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1092/2012, whereby the said original application of the petitioner stands dismissed. The petitioner had assailed the punishment imposed upon him by the respondent upon finding him guilty of misconduct. The allegation against the petitioner made on 18.12.2009 was as follows:

> *"There is a allegations against you, HC Devender no-174/NW, PIS no – 28822821, that while posted at P.S. Maurya Enclave and detailed for picket duty at Income Tax Colony from 8 P.M. to 8 A.M. In the intervening night of 11-12/09/09, you were found under the influence*

of alcohol. It is further alleged against you that while checking the vehicle you misbehaved with one Gaurav Abott S/O Naveen Chander R/o A-4/ 101, Printers Appt. Sec.-13, Rohini, Delhi. On the complaint Gaurav Abott you were medically examine at B.J.R.M Hospital, Jahangir Puri, vide M.L.C/ M.E. No. 754/09 DT 12/09/09 in which Doctor opined "smell of alcohol+ "the above at on you part amount to gross misconduct indiscipline and unbecoming of Police Officefr which renders you liable for Deptt. Enquiry."

2. The inquiry officer vide his report dated 05.02.2010 held a charge to be proved. The conclusion drawn by him reads as follows:

> *"Conclusion*
> *In view of the above discussion, the charge, served upon H.C. Devender Kumar, No. 148/NW that Smell of Alcohol was found +ve during the course of Medical Examination dated 12.09.2009, while he was on duty at Police Picket, Income Tax Colony, stands proved. However, the statement of Dr. Ashish Chaudhary (DW-3), who is also a well qualified Doctor/ Surgeon and Ex. Resident Surgeon of R.M.L. Hospital, New Delhi also needs consideration."*

3. Consequently, the petitioner was subjected to the penalty of withholding of the next increment for a period of two years permanently with cumulative effect dated 22.06.2010. This penalty was upheld in further departmental appeal.

4. The submission of the learned counsel for the petitioner is that the Tribunal has failed to appreciate the evidence in as much as the petitioner had produced in the Inquiry, Dr. Ashish Chaudhary as DW3 who had stated that he had prescribed Corex Syrup to the petitioner and that the said syrup contains alcohol. The petitioner had produced the prescription given by the

said doctor to the petitioner.

5. The version of the petitioner has not been accepted by the authorities for the reason that when he was got medically examined at 03.34 A.M. (the incident took place at 02.10 A.M.), the doctor found the presence of the smell of alcohol and the petitioner did not state to the doctor that he had consumed Corex Syrup. Moreover, the petitioner had not produced the bill regarding the purchase of the said syrup. Thus, on appreciation of evidence, the defence of the petitioner was not found acceptable.

6. While undertaking judicial review in writ proceedings, this Court does not resort to appreciation of evidence. If the view taken by the competent authorities is a plausible view upon appreciation of evidence, it is not upon this Court to interfere with the same, merely because another view is possible. The view taken by the Departmental authorities, in the present case, is certainly a plausible view based on the evidence produced in the inquiry. The evidence with regard to the presence of the smell of alcohol is independent evidence in as much, as, the medical report was prepared by the doctor at Babu Jagjiwan Ram Memorial Hospital on 12.09.2009 at 03.34 A.M. i.e. contemporaneously when the incident occurred. The conduct of the petitioner in not informing the doctor that he had taken corex syrup is also a factor against him, and justified for rejection of his evidence as the same appears to be an afterthought. Moreover, he did not produce the bill of the said medicine - stated to have been consumed by him. The production of DW3 and the prescription issued by him has not been accepted, presumably, on account of the fact that the said evidence could have been procured subsequently as well.

7. We are, therefore, not inclined to interfere with the impugned order.

8. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 31, 2018
N.Khanna