

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2538 of 2007**

Kamleshwar Prasad Trivedi (as per the original cause title 'Dwivedi')
(Dead) through LRs :

1. Smt. Shivkali Trivedi W/o Late Kamleshwar Prasad Trivedi, Aged About 44 Years
2. Archita Trivedi, D/o Late Kamleshwar Prasad Trivedi Aged About 14 Years
3. Arpita Trivedi, D/o Late Kamleshwar Prasad Trivedi Aged About 10 Years
4. Sudhanshu Trivedi S/o Late Kamleshwar Prasad Trivedi, Aged About 7 Years

All resident of Village And P. O. Kalwari, Distt. Rewa Madhya Pradesh
---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department Mantralaya, D. K. S. Bhawan Raipur, Chhattisgarh.
2. Director General Of Police, Police Headquarters, Raipur, Chhattisgarh
3. Additional Director General Of Police, Police Headquarters, Raipur Chhattisgarh
4. Inspector General Of Police, Police Headquarter, Bhilai Chhattisgarh
5. Senani 5th Vahini Special Task Force Chhattisgarh

---- **Respondent**

For Petitioner
For Respondents

Mr. Animesh Verma, Advocate
Mr. Vikas Bhaskar, Panel Lawyer

Order On Board By

Hon'ble Mr. Justice Prashant Kumar Mishra**17/10/2019**

1. Heard.
2. During pendency of the petition, the original petitioner Kamleshwar Prasad Trivedi (Dwivedi – as per the original cause title) (henceforth 'the petitioner') has died and his legal heirs are prosecuting this petition.
3. The important issue fallen for consideration in the present writ petition is whether the delinquent employee can be subjected to major penalty of removal from service on the charge of attending duties in a drunken condition, when, admittedly, he was not sent for medical examination to prove consumption of alcohol.
4. Brief facts, relevant for addressing the issue, are that while posting of the original petitioner as Security Guard for duty in the Bungalow of an Hon'ble Minister of the Government of Chhattisgarh on 8.10.2003, the petitioner was found to have consumed liquor and attended the duties in that condition and created nuisance/ruckus. The Panchnama was prepared in the presence of five policemen and upon finding that he is not in a position to attend the duties, he was sent back in a Government Vehicle to the Security Company's headquarter, however, during this journey, the petitioner was repeatedly trying to open the door and disturb the driver by interfering in the operation of

steering. He also threatened the driver to leave the 'C' Company otherwise anything may happen to him.

5. The petitioner was charge-sheeted for three charges. **First**, the petitioner demonstrated indiscipline by attending duties having consumed liquor and indulged in indecent conversation; **second**, he threatened the driver of the Government vehicle to leave the 'C' Company otherwise anything may happen to him and; **third**, for being habitual in consuming liquor and demonstrating indiscipline.
6. In the Departmental Enquiry, 11 witnesses were examined by the Presenting Officer, whereas, the petitioner examined 2 defence witnesses. The Enquiry Officer found all the three charges proved vide his Enquiry Report dated 27.5.2004-Ex.P/8. Copy of the report was supplied to the petitioner and the same was accepted by the Disciplinary Authority and eventually, punishment of removal from service has been imposed. The order has been affirmed by the appellate authority and thereafter, the authority dealing with two mercy petitions filed by the petitioner.
7. The oral evidence on the basis of which the Enquiry Officer has found charge No.1 proved, is not discussed by me for the reason that I am examining the legal premise on which such finding regarding attending duties while consuming liquor can be recorded.
8. Admittedly, the petitioner was not sent for medical

examination. Attending duties after having consumed liquor has been proved against the petitioner not on the basis of any chemical or other expert opinion but only on the basis of oral testimony of the fellow constables.

9. The law in this regard has been dealt by the Supreme Court in the matter of **Bachubhai Hassanalli Karyani Vs. State of Maharashtra, 1971 (3) SCC 930**. In the said matter, drunkenness of an accused in a criminal case was under consideration and in the said context, the Supreme Court considered the statement of the Doctor that a person could smell of alcohol without being under the influence of drinking. No urine test of the accused was carried out and even though the blood of the accused was sent for chemical analysis, no report of the analysis was produced by the prosecution. The Supreme Court held that on this evidence, it cannot be definitely held that the accused was drunk at the time of accident.

10. In the matter of **Munna Lal Vs. Union of India and others, (2010) 15 SCC 399**, the Supreme Court was dealing with charge against a Police Sub Inspector, who was allegedly found in a drunken condition while on duty. Dealing with the issue, the Supreme Court held thus in para 4 & 5 :

“4. The learned counsel appearing for the respondent submitted that the appellant was found guilty of dereliction of duty previously also and there were other disciplinary proceedings against the conduct of the appellant. But in

the instant case it was not proved that the appellant was drunk on the day when he was in duty. Evidence was not satisfactory to prove that he was found with any alcohol and he was also not taken to Safdarjung Hospital as suggested by the first doctor.

5. In the absence of positive evidence, we are of the view that the charge levelled against the appellant was not proved satisfactorily. In the absence of sufficient proof, the disciplinary authority should not have imposed such penalty. Therefore, the punishment imposed was illegal and the appellant is entitled to be reinstated in service and he is entitled to get 50% of the back wages for the period he was out of service. The respondents are directed to reinstate the appellant in service forthwith. The appellant's service during this period would be treated for other service benefits such as seniority, increment and pension."

(Emphasis supplied)

11. In a recent judgment, the Division Bench of Calcutta High Court in the matter of **Narendra Dutta Rai Vs. Union of India, 2018 SCC OnLine Cal 8613**, has referred to the Supreme Court's decisions in the matters of **Bachubhai Hassanalli Karyani** (supra) and **Munna Lal** (supra), to hold thus in para 49 & 51 :

49. Before imposing major penalty upon an employee the respondent authorities ought to have conducted the necessary medical test(s) to come to a definite finding that the employee was under the influence of alcohol which resulted in his misconduct. The respondents ought to have satisfied themselves that the employee was in such a mental and physical condition so as to deprive him of clearness of intellect and control of himself which he would otherwise possess and the said behavior was under

influence of alcohol. In the absence of any corroborating piece of evidence an employee ought not to be removed from service.

51. It is the well settled principle of law that the onus to prove the offence lies on the prosecution. In the instant case, it was the obligation of the respondent authorities to prove the case against the appellant and not the other way round. In the absence of any cogent evidence against the appellant the case against him could not have been proved by the respondents. Moreover the definite statement made in Charge II that the attending 'doctor of the hospital confirmed the intoxicated condition' of the appellant is absolutely false. This shows the predetermined and biased mind set of the disciplinary authority who conducted the inquiry against the appellant.

(Emphasis supplied)

12. In the above matter of **Narendra Dutta Rai** (supra) before the Calcutta High Court, the charges against the delinquent were exactly similar as has been alleged against the present petitioner. After holding that in the absence of medical opinion about the delinquent's inebriation, the Calcutta High Court partly allowed his appeal and set-aside the order of removal from service.

13. In the case at hand also, inebriation of the appellant is sought to be proved on the basis of *Panchnama* and oral evidence and not by requiring the petitioner to undergo any medical examination. Such procedure for proving the fact of inebriation while on duty would not be a prudent manner of proving the charge. Thus, charge No.1 against the petitioner has wrongly been found

proved by the Enquiry Officer. Second and third charges depend on the outcome of the first charge, therefore, if the first charge itself falls, the other two charges would fall flat in favour of the petitioner.

14.Ex-consequenti, the writ petition is allowed. The petitioner having died during pendency of the writ petition, he cannot be reinstated in service. Therefore, consequent upon quashment of the order of removal from service, the entire benefits including arrears of salary till the date of the petitioner's death and thereafter, the entire pensionary benefits shall be paid to his legal heirs, who have already been substituted in this writ petition.

Sd/-

(Prashant Kumar Mishra)

Judge

Shyna

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2538 of 2007****Appellants**

Kamleshwar Prasad Trivedi (as per the original cause title 'Dwivedi') (Dead) through LRs Smt. Shivkali Trivedi W/o Late Kamleshwar Prasad Trivedi and others

Respondents

State of Chhattisgarh and others

(Head-note)

Misconduct for attending duties having consumed liquor has to be proved by medical examination of the delinquent and not by oral evidence.