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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-13-2011

Judge : The Honourable Mrs. Meera Chhibber, Judicial Member & the Honourable Dr. a.K. Mishra, Administrative Member

Appeal No. : O.A. No. 2758 of 2011 M.A. No. 1971 of 2011 M.A. No. 1972 of 2011

Appellant : Ram Dev, Ex-constable

Respondent : Delhi Police Through the Commissioner of Police, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Amit Kumar, Advocate. For the Respondents: Mrs. Sumedha Sharma, Advocate.

Judgement :

By Hon'ble Mrs. Meera Chhibber, Member (J)

1. Applicant has challenged order dated 4.9.2009 whereby he was dismissed from service (page 18) and order dated 6.4.2010 whereby his appeal was rejected (page 15).

2. The brief facts of the case are that applicant was served with summary of allegations. After recording the evidence of PWs, following charge was framed

against the applicant:-

“CHARGE

I, Inspector, Krishan Kumar, EO/DE Cell hereby charge you Constable Ram Dev, No.7566/DAP (PIS No.28960671) that on the intervening night of 25/26.9.2007 from p PM to 7 AM, you along with Constable Ashwani, No.7523/DAP were detailed for UTP Guard Duty in Ward-2 ICU of DDU Hospital, New Delhi, where an UTP namely Rafal S/o andrzej was under admission. As per the statements of witnesses and persual of DD No.8 1 and 82 dated 25.9.2007 lodged by HC Sadhu Ram No.7095/DAP and SI Raj Kumar respectively and DD No.3 dated 26.9.2007 lodged by Inspector K.C. Negi of DDU Guard Room it is clear that you Constable Ram Dev, No.7566/DAP were not found present on your Guard Duty in ICU DDU Hospital and you were found unconscious in the Kharja of Ward No.9 from where you were got admitted in Emergency of DDU Hospital vide MLC No.22219/07. Dr. Harmanjit Singh, DDU Hospital opined in your MLC as “Smell of alcohol in breath (+)”, which clearly shows that you Constable Ram Dev, No.7566/DAP had consumed alcohol while on duty in ICU, DDU Hospital and also left the place of duty on 25.9.2007, which is a serious lapse on your part.

The above act on the part of you Constable Ram Dev, No.7566/DAP amounts to gross misconduct, negligence, carelessness and also dereliction in the discharge of your official duty, which renders you liable for punishment under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 read with Section 21 of Delhi Police Act, 1978”.

The Inquiry Officer gave his findings holding the charge was proved beyond any doubt against the applicant (page 55 at 59). The findings were served on the applicant. Disciplinary authority has noted in its order that the applicant did not file any representation against the findings of the IO despite issuance of 5 reminders nor did he give any suitable reason in his defence during the OR. He had further noted that there is no reason to disbelieve the report of the doctor of a reputed Government Hospital. Since applicant is not found sincere in performing his official duties, he is unfit to be retained in the disciplined force like Delhi Police, he, therefore, deserves severe punishment. Accordingly, the applicant was dismissed

from service. Being aggrieved, applicant filed an appeal which too was dismissed vide order dated 6.4.2010.

3. Applicant has challenged these orders on the ground that (1) no witness has seen him taking the alcohol. (2) In the MLC applicant was given rest by the doctor, which indicates that he was not well. (3) He has been dismissed only on the ground of smell of alcohol. (4) The doctor has not been examined, therefore, on the basis of said MLC, he could not have been dismissed from service. (5) The punishment given is disproportionate to the charge. (6) In any case extraneous material was taken into consideration by the disciplinary authority while imposing the punishment. (7) The appellate authority has not even considered the quantum of punishment even though he had taken this plea in his appeal, therefore, the orders may be quashed and set aside. He has placed reliance on LIC and Another Vs. Rampal Singh Bisen reported in 2010 (3) SCALE 121 and judgment dated 30.8.2007 given by this Tribunal in OA No.701/2005 in the case of Head Constable Ram Kumar.

4. Respondents have opposed the OA. They have stated applicant along with constable Ashwani were detailed for UTP Guard duty in Ward-2, ICU of DDU Hospital, New Delhi where an UTP, namely, Rafal S/o andrezej was admitted. Applicant was not found present on his Guard duty in the ICU,DDU Hospital instead was found unconscious in the Khajra of Ward No.9 from where he was got admitted in the emergency of DDU Hospital vide MLC No.22219/07, he was found intoxicated with liquor, (while on duty) which is a serious lapse. For the above act, he was placed under suspension with immediate effect vide order dated 8.10.2007. Proper enquiry was held wherein full opportunity was given to the applicant to defend himself. The charge was proved on the basis of evidence led in the enquiry. Applicant did not even file representation against the findings which shows he did not have any defence. The authority have passed the orders taking all the facts into consideration, therefore, it calls for no interference. The OA may be dismissed.

5. We have heard both the counsel and perused the pleadings as well. The charge against the applicant is he was posted as Guard Duty in Ward No.2 between the

night of 25/26.9.2007 for an UTP was admitted there but he was found missing from his place of posting. He was instead found in an unconscious state in Ward No.9. He was got admitted in emergency where doctors found he had consumed alcohol. The doctors prescription reads as under:-

“Patient brought in an unconscious state No relevant history available.

Attendants are not aware of the patient’s past or present medical illness.

O/E Patient drowsy Smell of alcohol in breath + Pulse - 88/min BP - 140/90 mmHg
Chest - B/2 conducted sounds + CUS - S1S2 (N) P/A - soft, LoSoKo

CNS - Pt. drowsy, CUS - E2V1Ms.

Pupils - B/L NS NR

Plantars - B/L

Imp. Alcohol Intoxication”.

6. From above, it is clear that the doctor has not only recorded smell of alcohol in breath is positive and after analyzing the other parameters had recorded Alcohol Intoxication. It is not the case of applicant that the doctor who examined the applicant was inimical to him. In fact, the doctor would not even have known who the applicant is. We have no reason to doubt the correctness of this document when correctness of same has not even been challenged by the applicant. This document was required to be proved only in the event applicant was able to produce evidence to the contrary, therefore, contention of the applicant that this document could not have been relied upon is rejected. Similarly it is wrong to suggest that he has been punished only on the ground of smell of alcohol in view of the facts as explained above.

7. Counsel for the applicant had placed reliance on judgment dated 30.8.2007 in OA No.207/2005. Perusal of same shows it is distinguishable because in that case the charge against the delinquent was he was found under the influence of alcohol. The doctor had opined that he had consumed alcohol but he was not under its influence. In fact even in this judgment it was observed that “misconduct

as per rule 22(b) of CCS (Conduct) Rules, 1964 is to be under the influence of any intoxicating drink or drug during the course of duty, and the concerned Government servant shall 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. If a Government servant appears in a public place in a state of intoxication that too would be a misconduct in view of clause (c) of rule 22”.

8. Whereas when applicant in that case was caught under influence of liquor he was in barrack, it was thus held he was not appearing in public place in a state of intoxication, therefore, rule 22 (c) of 1964 rules would not apply. It was in above facts held that “once the charge against the applicant was that he was under influence of liquor and the same could not be proved, surely, the applicant could not be held guilty of the charge framed against him”.

9. As compared to above, if the facts of present case are seen, there was a definite finding recorded by the doctor that it was a case of Alcohol Intoxication (page 28). The applicant was on duty and was supposed to guard UTP who was admitted in hospital. Not only he failed to guard the UTP but failed to guard himself also against alcohol. It is, therefore, definitely a misconduct.

10. Counsel for the applicant next contended nobody had seen him consuming the alcohol. This is not relevant because applicant was found to be intoxicated with liquor by the doctor on detailed examination, therefore, we find no merit in this contention.

11. Counsel for the applicant next contended that no reliance could have been placed on the MLC unless the Doctor was examined. He has relied on LIC and Another Vs. Rampal Singh Bisen reported in 2010 (3) Scale 121 for this purpose. This judgment is also distinguishable inasmuch as in the said case “neither copy of Inquiry Report was made available to respondent nor it was disclosed in the show cause notice as to on what premise finding of guilt was recorded by Inquiry Officer or by the Disciplinary Authority - Appellant did not lead any oral evidence, yet some of the documents filed by appellants were exhibited”. Moreover, it was dealing with the procedure required to be followed in trial court in terms of order XII Rule 1 and 2 of CPC.

12. Whereas in the instant case, the evidence has come on record which was not even disputed by the applicant. He neither produced any defence witness nor gave representation against the findings in spite of 5 reminders given to him which clearly shows he had no defence, therefore, the misconduct stood proved.

13. Counsel for the applicant submitted that applicant was having pain in the stomach, he had been administered some medicine thereafter he didn't know what happened to him but he didn't lead any evidence to this effect. After all he must have gone to some Doctor who would have prescribed the medicine or at least compounder, who could have been produced as a witness. He neither produced any prescription nor any witness, which shows it is an after thought.

14. He further submitted the Doctor has given him rest for 2 days the next day which shows he was sick. Even if rest was given, the next day, it doesn't mean he had not consumed alcohol the previous day. He might have been sick due to over consumption of liquor. This doesn't help the applicant.

15. However, we find merit in the last contention of the counsel for the applicant to the extent that while imposing punishment on the applicant, Disciplinary Authority had observed as follows:

“He, therefore, deserves for severe punishment. Holding him responsible for the severest misconduct and keeping in view his past lamentable and spontaneous behaviour and agreeing with the findings of the E.O., I. R.N. Meena, Dy. Commissioner of Police, III Bn., DAP, Delhi, therefore, inclined to impose the penalty of dismissal from service and accordingly hereby order to dismiss the defaulter Const. Ram Dev, No.7566/DAP from service with immediate effect.”

16. It is now known what was his past lamentable and spontaneous behaviour as neither it was part of the charge nor it has been discussed in the order yet penalty has been imposed taking this aspect into account. After all if his past conduct was to be taken into consideration, it should have been made a part of the charge.

17. Moreover, applicant had taken the plea of disproportionate punishment in the appeal but these aspects have not been considered by the appellate authority,

therefore, order dated 05.04.2010 is quashed and set aside. Matter is remitted back to the appellate authority with a direction to pass fresh order after discussing both the above points.

18. With the above direction, OA stands disposed of. No order as to costs.

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