

**(2019) 07 DEL CK 0218**

**In the Delhi High Court**

**Case No :** Criminal Writ Petition No. 6672 Of 2019

Const. Virender

APPELLANT

Vs

Commissioner Of Police & Ors

RESPONDENT

**Date of Decision :** 15-07-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation :** (2019) 07 DEL CK 0218

**Hon'ble Judges :** Vipin Sanghi, J;Rajnish Bhatnagar, J

**Bench :** Division Bench

**Advocate :** Parveen Kumar Mehdiratta, Avnish Ahlawat, Palak Rohmetra

**Final Decision :** Dismissed

## Judgement

Rajnish Bhatnagar, J

CM No. 28124/19

We have heard the submissions of counsel for the petitioner and perused the application. The application is allowed.

W.P.(C) No. 6672/19 & CM No. 28125/19

1. The petitioner has filed the present writ of certiorari seeking quashing of order dated 14.12.2016 passed by the Principal Bench of Central

administrative Tribunal in O.A. No. 2559 of 2013 and he also seeks quashing of orders dated 29.06.2011 and 31.10.2012 passed by the disciplinary

and appellate authorities respectively. The petitioner has been awarded punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay by two stages.

2. The allegations against the petitioner are that while he was posted at P.S. New Ashok Nagar, he was assigned PSO duty from 8 A.M. to 8 P.M.

on 03.09.2008 with one Virender Rawat, residing in the area of P.S. New Ashok Nagar. The petitioner was issued 9 MM pistol with 5 cartridges from

P.S. Malkhana in his name but he did not deposit it back in P.S. Malkhana after his duty hours on 03.09.2008. Later, while he was returning home, in

the night intervening of 03 & 04.09.2008 at 12.15 hrs., he was robbed of his service pistol with 5 live cartridges and his purse containing Rs. 29,000/-.

FIR bearing No. 462/2008 U/s 392/34 IPC was registered. The petitioner was got medically examined on the same night in Dr. Hedgewar Hospital

vide MLC No. 13056/08 and he was found under the influence of liquor.

3. A detailed departmental enquiry was held against the petitioner, wherein he was found guilty by the Enquiry Officer. The discussion of the evidence

found in the enquiry report reads as under :-

#### DISCUSSION OF EVIDENCE

The charge against the delinquent is that while returning home he did not deposit the govt. Pistol in P.S. Malkhana and was going to home, carrying

the pistol, which was robbed by some unknown persons in the way. Further, he was found under the influence of liquor. The prosecution has

examined seven PWs in support of the allegations. Out of them H.C. Pushpender (PW-5) is the main PW who reached the spot first on receiving a

PCR call has clearly deposed that Constable Virender was in an inebriated state and he was got medically examined at Dr. Hedgewar Hospital vide

MLC No. 2656/2008. The blood sample of constable was also preserved. A bare perusal of the MLC clearly goes to show that the smell of alcohol

was present in the smell of Constable Virender. PW 5 has also proved the MLC, which is exhibited as Ex. PW- 5/A. There is sufficient evidence on

record in the form of testimony of PW-5 and MLC that the constable had consumed alcohol. The second article of charge that he did not deposit the

Govt. Pistol in Malkhana after completion of duty is also proved as PW-4 has produced the arm & ammunition issue register according to which Govt.

pistol with 5 live cartridges were issued to Ct. Virender which he did not deposit back and proceeded to his home without depositing the arms and

ammunition in the Malkhana in contravention of instructions contained in SO No. 57/2008.

#### CONCLUSION

In view of the above discussion, statement of PWs, DW and documentary

evidence available on record the charge against Ct. Virender No. 910/E is proved beyond any shadow of doubt.â?? (emphasis supplied)

4. The disciplinary authority concurred with the said findings of the Enquiry Officer and consequently awarded the punishment of forfeiture of two years approved service permanently to the petitioner entailing proportionate reduction in his pay by two stages. In the said order, the Disciplinary Authority recorded as follows :-

â??I have carefully gone through the D.E. file, the findings of the E.O., the statements of the PWs, DW, defence statement to the charge, the representation submitted by the delinquent as well as the record brought on the DE file. The delinquent Constable was also heard in O.R. on

20.06.2011. He said nothing new apart from what he has explained in his representation. The pleas taken by the delinquent Constable are not tenable as he left the police station jurisdiction after duty with service pistol without permission, which is in contravention of instructions contained in SO No.

57/2008. The MLC of the delinquent also indicates that he had consumed alcohol at the time when he was robbed, which is serious misconduct.

Therefore, keeping in view of the facts and circumstances of the case in totality and agreeing with the findings of the Enquiry Officer, I Asif Mohd.

Ali, Addl. Deputy Commissioner of Police, East District, hereby award the punishment of forfeiture of two years approved service permanently to

Const. Virender No. 910/E (PIS No. 28900892) entailing proportionate reduction in his pay by two stages.â?? (emphasis supplied)

5. The appeal preferred by the petitioner was also rejected by an order passed by the Joint Commissioner of Police acting as Appellate Authority. The relevant extracts from the said order dated 31.10.2012 reads as follows :

â??Following the appeal, I have heard the appellant in O.R. He has stated nothing new to add to what he has already submitted in his appeal. He

should have deposited his service pistol in P.S. Malkhana after his duty was over but he failed to do so. I have gone through the appeal preferred by

the appellant and the other file records and found his contentions not convincing. Therefore, I do not find any reason to interfere with the orders of the

Disciplinary Authority. Hence, the appeal is rejected.â??

6. Thereafter, the petitioner preferred O.A. No. 2559/2013 and vide impugned order dated 14.12.2016, the Tribunal dismissed the Original Application.

7. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.

8. As far as the application for condonation of delay is concerned, the counsel for the petitioner has argued on the lines of the application.

9. It is urged by the counsel for the petitioner that the punishment imposed upon the petitioner is harsh. It is further urged that the petitioner was on

night duty till 11:00 P.M. on the date of the incident, so he was carrying his pistol, since, police personnel who are on night duty necessarily do not

deposit the arms on the same day. He further urged that the petitioner had consumed alcohol after his duty and not during duty hours and he relied

upon *Rattan Lal Vs. State of Haryana*, [1983 (2) SLR 159(P&H)].

10. In regard to the application seeking condonation of delay, the counsel for the respondents submitted that the petitioner has not shown any sufficient

cause for condoning the delay in preferring the present petition. It is urged by the counsel for the respondents that there is no infirmity in the impugned

orders. It is further urged that lesser punishment has been awarded by the department, keeping in view the fact that the arm and ammunition were

recovered. It is further urged by the counsel for the respondents that in judicial review, the scope of interference by this Court is very limited. He

further urged that the petitioner has not denied that he was under the influence of liquor while he was charged with the responsibility of safeguarding

his arm and ammunition, and the judgment (*supra*) relied by the counsel for the petitioner is of no help to him.

11. The O.A. was dismissed on 14.12.2016 and the petitioner has preferred the present writ petition only on 27.05.2019, i.e. after more than 2 years of

the dismissal of O.A. We have perused the application for condonation of delay and the perusal of the same shows that it is vague and bereft of

details. The entire blame has been put by the petitioner on the previous counsel. Now a days, it has become a trend to put the entire blame on the

previous counsel. If, according to the petitioner, his previous counsel was negligent, it is not understood as to why no action was taken by him against

the previous counsel. The petitioner has failed to show â??sufficient causeâ?? for condoning the delay in refilling of the writ petition. The application is,

accordingly dismissed.

12. Though, the petition is barred by delay and laches, we have also considered

the same on its merits.

13. In the instant case, the petitioner has not been able to establish on record that he was on night patrolling after he finished his duty as PSO. The

M.L.C. No. 13056/08 dated 04.09.2008 of the petitioner shows that he was smelling of alcohol when he was examined by the doctor at Dr. Hedgewar

Hospital which has not been denied by him. The petitioner after performing his duty on 03.09.2008 had not deposited 9 MM pistol No. 16211740 with

5 cartridges in P.S. Malkhana which he got issued from P.S. Malkhana in his name and he was under the influence of liquor when he was robbed of

his service pistol with 5 live cartridges and his purse containing Rs.29,000/-. In this regard, a case vide FIR No. 462/08 U/s 392/34 IPC was registered

at P.S. Anand Vihar.

14. The petitioner was carrying his service pistol with 5 live cartridges, which was issued to him for duty purposes, was not returned by him after duty

hours. While he was in the possession of the service pistol with 5 live cartridges, very heavy burden lay on him to safeguard his weapon but instead,

the petitioner consumed liquor while carrying the service revolver with him and lost the same. The act of the petitioner in consuming liquor while

carrying the service pistol with him speaks volumes about his conduct. The petitioner is a member of a disciplined force and it was least expected of

him to have indulged in such an act of sheer negligence. The reliance placed by the petitioner on the judgment in the case of Rattan Lal (supra) is

misplaced as the said judgment is distinguishable on facts. In the instant case, the petitioner was in inebriated state while he was carrying service pistol

issued to him for duty purposes which was not deposited by that time in the Malkhana.

15. The enquiry officer vide his finding dated 24.05.2011, the Disciplinary Authority vide order dated 29.06.2011 and the Appellate Authority vide

order dated 31.10.12 have returned consistent findings of guilt. The O.A. preferred by the petitioner has also been dismissed by the Tribunal vide its

order dated 14.12.2016.

16. This Court is not sitting as an appellate forum and it is not for this Court to re-appreciate the evidence. There is nothing on record to show that

there has been miscarriage of justice or violation of principles of natural justice as the petitioner was afforded sufficient opportunity to defend himself.

The findings returned in the enquiry against the petitioner, which have been accepted by the Disciplinary Authority and the Appellate Authority cannot

be said to be unreasonable, without any basis, or not borne out from the record. Reliance in this regard can be placed upon Government of Andhra

Pradesh versus Mohd. Nasrulla Khan, [2006 (2) SCC 82,] in which the Honâ??ble Apex Court has held that the scope of judicial review is confined

to correct the errors of law or procedural error if they result in manifest miscarriage of justice or violation of principles of natural justice. The Court in

para 7 has held that :

â??By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does

not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest

miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an

Appellate Authority.â??

17. The Apex Court in the case of S.R. Tewari versus Union of India, [2013 (7) SCALE 417,] has reiterated that â??The role of the court in the

matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the

authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very

limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the

conscience of the court, cannot be subjected to judicial review.â??

18. We do not find any infirmity in the impugned orders dated 29.06.2011, 31.10.2012, passed by the Disciplinary and Appellate Authorities

respectively, and the order dated 14.12.2016 passed by the Principal Bench of Central Administrative Tribunal. The punishment of forfeiture of two

years approved service permanently inflicted upon the petitioner entailing proportionate reduction in his pay by two stages, does not seem to be harsh,

looking into the charges against the petitioner. The petition is, therefore, dismissed.