

(2010) 09 DEL CK 0330

Delhi High Court

Case No: Writ Petition (C.) No. 3538 of 2010

Ravinder Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 7, 2010

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 1, 14

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Arun Bhardwaj, for the Appellant; Anjum Javed, for the Respondent

Final Decision: Allowed

Judgement

Mool Chand Garg, J.

Original Application No. 2139/2008 filed by the respondent Ravinder Kumar Sharma was dismissed by the Central Administrative Tribunal Principal Bench New Delhi vide order dated 26.05.2009 which has been assailed by the petitioner before us by filing the present writ petition for seeking a relief to set aside the order passed by the disciplinary authority and allow OA as aforesaid.

2. It is his case that the petitioner had been serving Delhi Police and was posted as SHO of P.S. Dwarka at the relevant time when he was issued a show cause notice on the ground that:

On 28.09.2006, a PCR call was received at PS Dwarka, vide DD No. 9A to the effect that in front of Telephone Exchange, Sector-6, Dwarka, a black colour bag was lying. PCR van Z-80 attended the call and further transmitted the details that two persons namely Raj Singh s/o Jai Singh and Vicky s/o Inder Singh have been caught with a motorcycle and the bag containing illicit liquor. The PCR van handed over the accused along with the motorcycle and the illicit liquor to HC Tejpal Singh for further necessary action on the part of local police. On perusal of the FIR by the undersigned, it was observed that only one person with the illicit liquor was booked,

vide case FIR No. 814/06 u/s 61/1/14 Excise Act while the other accused along with the motorcycle was let off. You did not point out this serious lapse and only when the undersigned enquired into the matter from the SDPO, this shocking instance of connivance of local police with the bootleggers came to fore.

3. Even though the petitioner submitted a reply denying the allegations made in the show cause notice particularly to the aspect that two persons were caught as stated in the show cause notice and relying upon the FIR No. 810/2006 dated 08.09.2006 which itself goes to show that only one person was caught with the illicit liquor and was arrested and as such there was no lack of supervision on his part or any negligence. Yet the disciplinary authority imposed punishment of censure upon the petitioner which was assailed by him by way of an order dated 12.03.2007. The appeal against the aforesaid order was dismissed.

4. It was therefore the petitioner filed OA before the Tribunal bearing No. 2139/2008 which as stated above has been dismissed vide order dated 26.05.2009 which has been assailed by the petitioner before us.

5. The FIR in this case was registered on the basis of a statement made by Head Constable Warriyam Singh who was the in charge of the PCR. His statement reads as under:

Bayan-ajane HC Warriyam Singh No. 650/PCR. I/C-Z/80 SOUTH WEST ZONE

Bayan-ajane kiya ki mein Delhi Police mein batoor HC tainaat hoon aur batoor I/C Z-80/PCR Van par meri duty raat 8 PM se 8 AM, aaj subah tak thie, samay karib 8 bajkar eik minute par C/ROOM se ek call mili ki SEC-6 red light par ek kale rang ka bag rakhhaa hein jis par mein hamrahi staff mauka par pahonchah tau ek ladka kale rang ke bag ko lekar khada thaa jo hame dekhkar bhagne laga jisko meine HC ne hamrahi staff ki madad se os ladke ko pakda tatha bag check kiya to bag mein BONNIESCOT WHISKY sharab ke pauvee bhare huyen thein jinko ginane par 120 pauvee huin jo pratyek pauvee par 180 ML veih 42.8 V/V 75 PROOF vah FOR SALE IN HARYANA ONLY likha hein jo bag malik ka naam patah baad dariyafat Ram Singh S/o Jai Singh R/o C-90 Hari Enclave Aman Vihar Sultanpuri New Delhi maloom huan jiski sarsari talashi lee gayee jo kuch nahin mila jo uprokt ladke ne apne paas najayaj sharaah rakhkar jurum kiya hein eske khilaaf kanooni karyavahi ki jaye aapne mera bayan likha sun liya theek hein. SD.ENGLISH HC Waryam SINGH No. 650/PCR, SOUTH WEST ZONE ATTESTED HC TEJPAL SINGH PS.DWARKA 28/9/06.

6. In his reply to the show cause notice the petitioner has submitted:

Subject: Regarding reply to the show cause notice for censure issued to Insp. Ravinder Kumar Sharma No. D-1/312

Hon"ble Sir,

With utmost regard and humble submission I beg to submit that I have been served with a show cause notice for censure issued vide No. 12252-54/HAP-I/SW Distt. Dated 29.09.06 on the allegations that on 28.09.06, a PCR call was received at PS Dwarka vide DD No. 9-A to the effect that in front of Telephone Exchange, Sector-6 Dwarka, a black colour bag was lying. The PCR Van Z-80 attended the call and further transmitted the details that two persons namely Raj Singh s/o Jai Singh and Vicky s/o Inder Singh have been caught with a motorcycle and the bag containing illicit liquor. The PCR Van handed over the accused along with the motorcycle and the illicit liquor to HC Tejpal Singh No. 411/SW of PS Dwarka for further necessary action. The perusal of FIR revealed that only one accused was let off along with the motorcycle. It was also been mentioned that I did not point this incident and the facts of connivance with bootlegger came to notice only through SDPO.

In this connection it is humbly submitted that it is a fact that one of the persons apprehended by PCR staff was let off by HC Tejpal Singh No. 411/SW and Constable Braham Prakash No. 961/SW along with motorcycle and when this fact came to my notice, I immediately informed the ACP/Dwarka and produced the defaulter Head Constable and Constable before him who in turn had informed your goodself immediately. The misconduct was on the part of the above individuals and I had no malafide in this episode and the same was beyond my control in ordinary course of official duties as the police department works in good faith and locality. The misconduct of the individuals is not attributed on my part. I had also sent a separate report in this regard for information of Sr. Officers and necessary departmental action against the defaulters who were subsequently went to Distt. Lines.

It is pertinent to mention that prior to this incident, on 20.05.06, I had got recovered 315 bottles of liquor along with vehicle Sentro Car No. DL-9CH 3972 vide FIR No. 457/06 u/s 61/1/14 Ex. Act P.S. Dwarka. Apart from this, 61 cases have been registered under Excise Act during the year 2006.

In view of my above humble submission it is requested that the show cause notice for censure issued to me may kindly be vacated in the interest of justice. I may also kindly be given an opportunity of personal hearing to explain the facts in person.

Thanking you,

Yours faithfully,

Ravinder Kumar Sharma

Inspr. No. D-1/312

SHO/PS Dwarka: Delhi

7. The reply goes to show that as soon as the petitioner came to know that one of the persons apprehended by the PCR staff was let off by Head Constable Tejpal Singh he informed the ACP Dwarka and produced the defaulter Head Constable and

Constable before him who in turn had informed the said fact even to the ACP.

8. In this case no regular departmental enquiry has been held by the respondents which could have brought on record as to whether the stand taken by the petitioner in his reply regarding informing the facts of letting off one of the person who was caught with illicit liquor immediately or not. In the absence of any such evidence the order passed by the disciplinary authority particularly in the light of the statement made by Warriyam Singh who is the author of the FIR cannot be sustained. Accordingly, the order passed by the Tribunal dated 26.05.2009 which has been passed without taking into consideration the statement made by Warriyam Singh cannot be sustained. The writ petition is allowed and consequently the impugned order dated 26.05.2009 as well as the order imposing punishment of censure against the respondent dated 12.03.2007 are set aside with no order as to costs.