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C.A.No. 7140 OF 1999  
ITEM No.102

COURT NO. 9

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7140 OF 1999@@  
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STATE OF U.P. & ORS. ...APPELLANTS

VERSUS

HARENDRA KUMAR ...RESPONDENT  
(With office report)

Date : 06/02/2003 This appeal was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. Ravi Prakash Mehrotra, Adv.  
Ms. Deepti R. Mehrotra, Adv.  
Mr. Garvesh Kabra, Adv.

For Respondent (s) Mr. Bahar U. Barqi, Adv.  
Mr. Anis Suhrawardy, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
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Mr. Ravi P. Mehrotra, learned counsel for the appellants started his arguments at 12.30 p.m. and concluded at 12.50 p.m. After that, Mr. Bahar U. Barqi, learned counsel for the respondent argued the matter for 20 minutes.

The appeal is allowed in terms of the signed order.  
No costs.

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Sarita (Suraj Prakash)@@  
AA  
Court Master@@  
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7140 OF 1999@@  
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STATE OF U.P. & ORS.

...APPELLANTS

VERSUS

HARENDRA KUMAR

...RESPONDENT

O R D E R@@  
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When certain misconduct came to the notice of the competent authority, a preliminary enquiry was ordered to ascertain as to whether there was any need to initiate disciplinary proceeding or not. After preliminary enquiry and in the light of the preliminary enquiry report, disciplinary proceedings were initiated against the respondent on the charge that while he was on duty he has consumed liquor and abused another constable when he was on duty. Thereafter, a regular enquiry was held and on the basis of the material placed in the enquiry, the Enquiry Officer having recorded a finding that the charge levelled against the respondent was proved, made the following recommendations :

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"Task force battalion is armed with sophisticated weapons and a minor diversion or negligence can prove fatal. Therefore it is dangerous if an employee is on duty while in inebriated state.

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Being in an intoxicated state while reporting on duty and showing indiscipline is not something appreciated or desired in Task force or PAC a disciplinary force. Therefore it is recommended that this constable Harinder Kumae 56306 may be dismissed from service under the provision of 14(1) of UP Police Officers of the Subordinate Services (Punishment and Appeal) Rules 1991."

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Looking to the report and recommendations of the Enquiry Officer and on consideration, the disciplinary authority passed an order of dismissal of the respondent from service. Aggrieved by and not satisfied with the said order, the respondent approached the State Public Service Tribunal challenging it raising three contentions :

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1. Prejudice was caused to him during the enquiry.

2. There has been non-application of mind by the disciplinary authority while passing the order of dismissal.

3. The imposition of extreme penalty of dismissal from service was too harsh and disproportionate to the charges held proved against him.

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The Tribunal after considering the rival contentions on their relative merits held that there was no prejudice caused to the respondent in the enquiry, the punishment imposed on the respondent was not disproportionate to the charge held proved. However, the  
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Tribunal found fault with the order of dismissal on the ground that the disciplinary authority did not apply its mind and merely passed the order on the basis of the recommendations made by the Enquiry Officer. In that view, the Tribunal felt that the order of dismissal was vitiated and accordingly allowed the application and set aside the order of dismissal, however, gave liberty to the appellants to pass fresh order of punishment in accordance with law after giving full opportunity of hearing, if so desired. The appellants aggrieved by the order passed by the Tribunal, approached the High Court by filing a writ petition challenging its correctness and validity. The High Court unfortunately dismissed the writ petition without even broadly noticing the contentions and/or the questions of law raised before it. The order passed by the High Court in the writ petition reads thus :

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"Heard counsel for petitioner.

Learned Standing Counsel could not assail the finding recorded by the Tribunal. The writ petition is dismissed."

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Hence this appeal.

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.4.

Learned counsel for the appellants contended that the Tribunal committed a manifest error in setting aside the order of dismissal having held that no prejudice was caused in the enquiry conducted against the respondent and the punishment imposed on him was not disproportionate; the Tribunal was wrong in holding that there was non-application of mind by the disciplinary authority. In support of this, he drew our attention to the order of dismissal passed by the disciplinary

authority.

In opposition, learned counsel for the respondent made submission in support and justification of the impugned order. The learned counsel made attempts to question the findings of the Tribunal on other aspects, i.e., that no prejudice was caused to the respondent in enquiry and that the punishment was not shockingly disproportionate. He emphasized that the disciplinary authority did not apply its mind and simply acted upon the recommendations of the Enquiry Officer while passing the order of dismissal. Finally and alternatively, learned counsel pleaded that having regard to the age of the respondent and his family responsibilities, even if

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this Court is taking a view that the impugned order affirming the order of the Tribunal cannot be sustained, leniency may be shown and a lesser punishment may be imposed upon the respondent.

We must notice that the respondent did not challenge the findings of the Tribunal, it was only the appellants who questioned the validity and correctness of the order of the Tribunal. The only contention that survives for our consideration is : whether the disciplinary authority did not apply its mind in considering the case of the respondent while passing the order of dismissal. We think it is appropriate to extract relevant portion of the order of dismissal which reads :

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"That while you were posted as Constable a report was received by me about your having had consumed liquor and abused Constable Driver Omparkash Pall while you were on terrorist duty in Kasimpur Garhi P.S. Afzal garh district Bijnor and hence indiscipline. I had thereon ordered a preliminary inquiry on 15th March 1994 and the same was conducted by one Sri Girish Chandra Dhyani, Dal Nayak.

Sri Girish Chandra Dhyani had submitted a report in this context on 2.4.94 wherein you were found guilty in the above incident and departmental action against you was recommended under provision 14(1) of U.P. Police Officers of the Subordinate Services

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(Punishment and Appeal) Rules 1991. As I found myself agreeing with the above report, the departmental action against you was decided to be taken by Sri Ram Bodh Assistant Commandant on 9.5.94.

The departmental proceedings against you were held by Shri Ram Bodh under the provision of 14(1) of the above Rules while rendering you reasonable opportunity to defend yourself. In his report submitted on 27-7-94 he recommended your dismissal from service as the charges were fully established.

After receiving the above conclusions I closely studied the entire case and I found myself in consent with the inference dated 27-7-94 of Shri Ram Bodh Assistant Commandant, 47th Battalion, PAC I issued a show cause notice to you on 8.8.94 wherein it was clearly mentioned that you were required to submit your reply within 8 days of show cause notice's receipt otherwise it shall be presumed that you have nothing to offer in defence and it was also clarified that in case your reply is received within the prescribed time then the final decision will be taken only after considering your explanation sympathetically.

xxxxxxx

After you returned from leave you did not file any Explanation till date. When your statement was being recorded you were specifically asked as to if you have to say anything in reply to the show cause notice but you had refused to."

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It is clear from the portion of the order extracted above that there has been proper application of mind by the disciplinary authority. The disciplinary authority has also stated in the order that after receiving the conclusions from the Enquiry Officer he closely studied

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the entire case and found himself in agreement with the report of the Enquiry Officer. It is clear from the same order that a show cause notice was given to the respondent to make any written submission by way of explanation.

Having regard to the nature of the charge, i.e., that the respondent had consumed liquor on duty, that too on a duty in relation to the terrorist activities and had abused another constable driver, proved by the evidence which is not challenged, we fail to understand what more consideration was required by the disciplinary authority. This apart, as we have already stated above, bare reading of the entire order of dismissal clearly shows that there has been proper application of mind. The disciplinary authority agreeing with the Enquiry Officer need not write a detailed judgment. In this view, the Tribunal committed a serious error in holding that there has been non-application of mind in passing the order of dismissal. The Tribunal having found that no prejudice was caused to the respondent in enquiry proceedings and punishment imposed was not disproportionate, was not at all justified in setting aside the order of dismissal.

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It is unfortunate that the High Court, as stated above, did not look into the matter at all in exercising the power of judicial review and had simply passed a non-speaking order. Looking to the entire facts and circumstances, we do not find any good ground to sustain the impugned order affirming the order of the Tribunal.

Having regard to the nature of charge proved and in view of the finding of disciplinary authority and the finding of the Tribunal that punishment imposed on the respondent was not disproportionate, it is not appropriate to modify the punishment in any way. Hence, the appeal is entitled to succeed.

The appeal is allowed. The impugned order passed by the High Court affirming the order of the Tribunal is set aside. The order passed by the disciplinary authority is restored. No costs.

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.....J.  
(SHIVARAJ V. PATIL)

New Delhi,  
February 6, 2003.

.....J.  
(ARIJIT PASAYAT)