

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1919/2002

New Delhi this the 2 day of April, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Samir Kumar
Sub Inspector of Delhi Police
PIS No.16950231
R/o 7C, Police Colony
Model Town-II
Delhi.

... Applicant

(Shri Anil Singhal, Advocate)

vs.

1. Addl. Commissioner of Police
Armed Police, PHQ
IP Estate
New Delhi.

2. Dy. Commissioner of Police
9th Bn.DAP, PHQ
IP Estate
New Delhi.

..... Respondents

(By Shri George Paracken, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Samir Kumar) is a Sub-Inspector in Delhi Police. He was posted at Police Station Hauz Khas and during that period he had been handed over the investigation of many cases. On his transfer to District Lines/South District, he had handed over 19 case files to the officer incharge of Hauz Khas Police Station. Out of these cases, 12 cases were having shortcomings/serious lapses. In pursuance of the same, it was felt that it amounted



to gross misconduct unbecoming of a police officer. Departmental proceedings had been initiated against the applicant under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980. The inquiry officer had gone into the same and out of 12 cases that were under investigation found the applicant guilty of the charges only in 7 cases. The disciplinary authority acting upon the said report had imposed a punishment of stoppage of one year's service increment temporarily. The findings of the disciplinary authority read:-

"I have carefully gone through the findings of Enquiry officer, representation submitted by the defaulter SI. in response to the findings of Enquiry officer, oral submission in O.R. as well as other material/documents available in the D.E.files. I am not satisfied with the findings of Enquiry Officer. SI while appearing in my Orderly Room stated that the investigations are supervised by the S.H.O. as they are put on other duties also from time to time. He also pointed out that a thorough enquiry of other I.Os as on today will reveal the picture as he has been selectively victimised. These lapses should have been pointed out by the S.H.O. Out of 12 cases, 5 cases were dropped for the lapses and for 7 cases Enquiry Officer has given his findings. This means that the charges are partly proved.

However, lapses of the SI cannot be ignored while agreeing with the findings of the Enquiry Officer partly. Hence I, Shri K.D.Singh, DCP/9th Bn.DAP, Delhi hereby award him the punishment of stoppage of one year's service increment temporarily."

The applicant had preferred an appeal which was



dismissed.

2. By virtue of the present application, he seeks quashing of the order passed by the disciplinary authority on 7.9.2000 and the appellate order of 19.2.2002 and to restore his withheld increment with consequential benefits.

3. The application has been contested. The respondents contend that there were 12 cases involving dereliction of duty against the applicant which amounted to misconduct and consequently there is no ground for this Tribunal to interfere.

4. The learned counsel for the applicant at the outset relied upon a decision of the Supreme Court in the case of **Union of India and others v. J.Ahmed**, AIR 1979 SC 1022 and urged that misconduct is different from lack of efficiency or failure to attain the highest standard of administrative ability. According to the learned counsel even if the assertions of the respondents are accepted, still at best, it may amount to negligence in performance of the duties or an error in investigation rather than dereliction of duty.

5. In the case of J.Ahmed (supra), he was a member of the Indian Administrative Service. He had been posted as Deputy Commissioner and District Magistrate, Nowgong District. There were large



(10)

scale disturbances in the city and considerable damage had been caused to the property. The Additional Chief Secretary to the Government of Assam had inquired into the allegations of disturbances and submitted a report. Shri Ahmed was suspended. One of the questions that came up for consideration in that matter was as to whether this was a misconduct or failure to attain the highest standard of administrative ability. It was in the back-drop of these facts that the Supreme Court held that the inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct.

6. This being the position in law, necessarily, the present application has to be tested on the touch-stone of the same. It is not in dispute that investigation had to be conducted with utmost promptitude in accordance with the provisions of Code of Criminal Procedure. If there is inordinate delay, necessarily one can draw an inference of there being a misconduct unless there are plausible explanations in this regard.

7. During the course of submissions, our attention was drawn to the fact that First Information Report No.54/1999 was not one of the

GA

cases mentioned in the charge framed but still the inquiry officer had held the applicant guilty of the same. To that extent, the respondents' learned counsel could not draw our attention to any other factor.

8. This indeed is a mistake on the part of the inquiry officer, but on that count, the entire proceedings need not be quashed keeping in view the subsequent facts that have to be noticed hereinafter.

9. The disciplinary authority had looked into the individual cases of alleged dereliction of duty. The learned counsel for the applicant tried to justify the acts of the applicant in this regard. At the outset, it may be mentioned that justification can only be seen from the record and not the factors which are not part of the record.

10. In First Information Report No.668/1998, the matter pertained to offences punishable under Sections 279/337 of the Indian Penal Code. The applicant raised a plea that the complainant had stated that a black colour Esteem had caused the accident. The applicant had traced the owner of the vehicle and served a notice under Section 133 of the Motor Vehicle Act and it was found that the said vehicle was not involved as it was bearing

GA

registration number pertaining to an Omni Van and not a black colour Maruti Esteem. We need not delve into this controversy because the applicant had to lead the said evidence before the inquiry officer. Otherwise also, when there is no specific statement forthcoming, further investigation could always be effected in this regard on fake numbers etc. and seemingly nothing had been done on behalf of the applicant.

11. Similarly with respect to First Information Report No.332/1998 pertaining to offences punishable under Section 354 read with Section 451 of the Indian Penal Code, the plea of the applicant is that the officer incharge of the police station was of the opinion that case should be cancelled and it was for this reason that the accused person was not arrested by the applicant till 22.7.1999. However, when the case was again discussed with the officer incharge of the police station, he had advised the applicant to submit a challan in the court. The applicant thereupon arrested the accused on 22.7.1999. Once again herein the Station House Officer had not been appointed. There is little appearing on the record to substantiate the plea of the applicant.

12. The next First Information Report pertaining to the same controversy is No.462/98

ls Ag

13

with respect to offences punishable under Section 304-A of the Indian Penal Code. One Mohan Lal, an electrician had died because of electrocution. The matter remained unattended for months together. We find no reason to accept the finding when the victim was also from the Delhi Vidyut Board and on the report of the Assistant Engineer, the case was sent as untraced. Needless to emphasise that it was for him as an investigating officer to do the job effectively and dispassionately.

13. In First Information Report No.913/1998 pertaining to offences punishable under Sections 406/420/34 of the Indian Penal Code, the assertion of the department was that no concrete evidence was collected and efforts made to arrest the accused. The applicant contends that the documents were handed over to him on 28.5.1999 after six months. Therefore, actual investigation could start only after receipt of the said documents. For the purpose of the present order, we can conveniently state that the said evidence had to be produced before the departmental authorities/inquiry officer rather than before this Tribunal.

14. In First Information Report No.2/1999 with respect to offences punishable under Sections 279/337 of the Indian Penal Code, the department

18 Ag

had alleged that the accused was arrested after 7 months from the date of registration of the First Information Report. The explanation now being offered is that the applicant had located the vehicle which belonged to the Delhi Jal Board, Mahrouli and the driver was transferred from Mahrouli to Khanpur which cannot be a good defence because seemingly it was not before the inquiry officer.

15. The last First Information Report No.171/1999 with respect to offences punishable under Sections 279/337, the department alleged that the case remained pending with the applicant without investigation. It is now being urged that it remained pending because of non-availability of the nature of injury. All these facts and the defence now putforward should have been adopted by producing the relevant evidence before the inquiry officer. We are not delving deep into the the same because primarily it is for the inquiry officer/ disciplinary authority to consider and appreciate the said evidence. It is not a case of there being no material against the applicant to suggest that there was no dereliction of duty. Further probing, therefore, is not called for. Resultantly, the said contention must be rejected.

16. For these reasons, the application

ls Ag e

(15)

being without merit must fail and accordingly is
dismissed. No costs.

(Govindan S. Tampi)
Member (A)

/sns/

(V. S. Aggarwal)
Chairman