

Central Administrative Tribunal  
Principal Bench

O.A.No.2404/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 3rd day of July, 2003

Shri B.R.Paul  
Asstt. Commissioner of Police  
P.G.Cell  
Delhi Police  
South District  
New Delhi. .. Applicant

(By Advocate: Sh. V.S.R.Krishna)

Vs.

1. Union of India  
through  
The Secretary  
Ministry of Home Affairs  
Government of India, North Block  
New Delhi.
2. The Joint Secretary  
Ministry of Home Affairs  
Government of India, North Block  
New Delhi - 110 001. .. Respondents

(By Advocate: Sh. R.V.Sinha)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, who is working as Gr.II Officer of the National Capital Territory of Delhi, impugnes a minor punishment of censure inflicted by an order dated 12.7.2001.

2. Applicant was duly appointed as ACP in Gr.II of the Delhi and Andaman & Nicobar Islands Police Services (in short DANIPS) with a fixed seniority in the year 1994.

3. On circulation of provisional seniority list, applicant submitted his representations for wrong fixation of seniority. Subsequently, the seniority was revised.

4. Vide Office Memorandum dated 27.5.1999, issued under the Rule 16 of the CCS (CCA) Rules, 1965, the following imputation was alleged against the applicant:

"Shri B.R. Paul was working as Assistant Commissioner of Police (Headquarters), Delhi Traffic Police, during 1996 when the Delhi Police launched a scheme for installation of plastic bollards with rubber shafts at selected road stretches in Delhi with a view to enforce lane discipline by segregating fast and slow moving traffic. As a part of this scheme, Delhi Police purchased bollards worth about Rs.50.00 lakhs from M/s Aapurti enterprises.

2. Shri B.R. Paul forwarded a proposal for purchase of 2000 pieces of lane dividers without proper application of mind as he approved the proposal for issuance of the short-term tender without obtaining formal orders from the competent authority. He also approved the faulty draft of specification without forwarding it to his senior officers or to an expert. Shri B.R. Paul also failed to scrutinise the tenders properly and did not point out that the firm had not mentioned anything about the warranty and guarantee clause in the tender documents. He was required to carry out verification about the firm but he failed to submit any report in this regard..

3. Thus, Shri B.R. Paul failed to maintain absolute integrity and devotion to duty thereby contravened rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964."

5. Applicant made a representation against the aforesaid memorandum. Accordingly, in response to thereof, a minor penalty was imposed. Applicant through his communication dated 16.8.2001, in order to file an effective appeal, requested the respondents to serve upon him certain relevant documents, finding no response, present OA has been filed.

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6. Shri V.S.R.Krishna, learned counsel for applicant, assails the punishment being based on no evidence and no misconduct and also discrimination and in violation of Articles 14 and 16 of the Constitution of India.

7. In conspectus of above, it is contended that a departmental inquiry was held against DCP (Traffic), Shri G.C.Dwivedi, though the minor penalty of censure was inflicted upon him but on appeal, the penalty was set-aside. While referring to the final order passed by the Joint Commissioner of Police on 14.5.2002 on the inquiry held against Inspector A.U.Siddiqui as well as ASI Surjit Singh, on identical allegations while referring to testimony of PW-11, the then Additional Commissioner of Police which has been reflected in the final order passed, exonerating these officials, it has been stated that idea to introduce the lane dividers in Delhi was of the then DCP (Traffic) and after the approval of the competent authority tenders were floated in the Newspaper and one M/s Aapurti Enterprises was selected by the Chairman, DCP(Traffic) and Members, having quoted the lowest rates. On the basis of which Work Order was issued to purchase of such items was fully justified and, as per the file, and the ACP, the superior officer of the applicant, approved the same on behalf of the Commissioner of Police.

8. As the aforesaid tender was with the approval of the DCP (Traffic), misconduct alleged against the applicant, forwarded a proposal being

approved by the higher authorities, no misconduct has been made out and the applicant was punished on merely suspicion and surmises.

9. On the other hand, respondents' counsel, Sh. R.V.Sinha, resorted to Section 20 of the Administrative Tribunals Act, 1985, contends that as an appeal, against censure, is a statutory remedy available under Rule 20(3) of the Rules *ibid*, having failed to avail the same, OA is not maintainable for non-exhaustation of remedies.

10. In so far as the punishment is concerned, it is stated that having approved the proposal for purchase of bollards on short term tender notice on the ground that the dealing hand, ASI in his note dated 22.7.1996 claimed that the then DCP(Traffic) had ordered the same whereas competent authority had otherwise laid down guide-lines for placing such tenders it was not within his competence to deviate from the earlier decision, which is a grave omission.

11. According to Sh. R.V.Sinha, it is on the basis of material, applicant has been punished, as such the punishment cannot be vitiated on account of no misconduct and is in accordance with the procedural rules.

12. Lastly, it is contended that it does not lie within the jurisdiction of this Court to act as an appellate authority over the findings arrived at by the respondents and to reappraise evidence.

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13. In the rejoinder, pleas taken in OA are reiterated.

14. I have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by the apex Court in Union of India v. J.Ahmed, 1979 SCC (L&S) 157:

"However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an interference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

15. The Apex Court in P.C. Joshi v. State of U.P., 2001(6) SCC 491 held that in absence of any material to reflect on the Judge's reputation, integrity, good faith or devotion to duty or any corrupt motive on his part, omission to grant bail in the first instance, held would not constitute misconduct.

16. If one has regard to the aforesaid ratio what constitute misconduct is a deliberate and intentional act of employee, but a mere error in

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Judgement without any culpability would not constitute <sup>in</sup> misconduct in the conspectus of the present case, where the applicant has been alleged to have forwarded a proposal for purchase of 2000 pieces of lane dividers without obtaining the orders of competent authority and acting on a note forwarded by ASI as to accord of approval by DCP(Traffic), and without obtaining formal orders of the competent authority, he has been guilty of his failure to maintain absolute integrity and devotion to duty. This is injuxta position to the finding arrived at in a departmental inquiry <sup>of</sup> Inspector A.U.Siddhiqui. It has also been alleged that by submission of proposal without going into the merits and non-application of mind and mechanically recommending the proposal submitted by ASI.

17. The following observations have been made by the disciplinary authority while exonerating the Inspector and another Co-defaulter.

"I have gone through the departmental inquiry filed with relevant records as well as the findings submitted by the E.O. The perusal of statement of PW-7 Shri B.R. Paul the then ACP/HQ, PW-Shri Rajinder Gupta the then ACP/TE, Traffic, and PW-11 Shri Amod Kumar Kenth the then Addl. CP/HQ, Delhi had clearly stated in their statements that the idea to introduce the lane dividers in Delhi was of the then DCP/Traffic and after the approval from the competent authority, tenders were floated in the Newspapers and M/s Aapurti Enterprises was selected by the Chairman (DCP/Traffic) and Members. The said Firm had quoted lowest rates. On the basis of lowest rates, the Work Order was issued to the Firm. The PW-11 Addl. CP/HQ deposed that the proposal to purchase the said items was fully justified and convincing in terms of para 1 to 12/N of the concerned file. He accorded the administrative approval on behalf of C.P., Delhi."

18. If one has regard to the aforesaid, the DCP(Traffic) had already approved the aforesaid tender and had himself introduced it. Accordingly, the applicant on the basis of note placed before him, had rightly acted on it in a bonafide manner. It is also apparent that as the firm had quoted lowest rates, Add<sup>u</sup>CP. (Headquarters) justified the directions as contained in the concerned file, and the administrative approval was accorded on behalf of the Commissioner of Police. This leaves no doubt that when the superior authorities have already approved the tender and floated the same, applicant cannot be made a scape goat.

19. I do not find allegations constituting<sup>u</sup> misconduct as the applicant has acted in a bonafide with application of mind and the actions have been ratified and already approved by the officers in hierarchy, this is sufficient to say that applicant had neither failed to maintain absolute integrity and was also devoted to duty.

20. In so far as the preliminary objection as to non-filing of an appeal, I find that in order to facilitate the applicant, on file, a request has been made to the concerned authorities to serve upon him the relevant documents which were essential in support of his defence and were in possession of the official respondents, despite his request, which has been acknowledged by the respondents and has been conveyed by the Ministry, to the DCP (Vigilance) by its letter dated 27.9.2001, nothing further moved, and even<sup>u</sup> rejection of such a request has not been communicated

to the applicant. On this, having constrained to file the present OA, I over rule the preliminary objection. Non-exhaustation of statutory remedy cannot be attributed to the applicant. What Section 20 of the Act ibid prescribes is that the application shall not ordinarily be admitted without exhaustation of remedy and it is not a thumb rule. Exception can be in a peculiar case as the present one.

22. I find another infirmity in so far as the exoneration of Sh. G.C.Dwivedi, DCP (Traffic) on appeal by the person. It is settled position of law that no one can be discriminated, if identically situated, in the matter of punishment. Once the DCP who had floated the tender had been exonerated in appeal, I could have asked the applicant to prefer an appeal with direction to appellate authority to mete out the same treatment to him as accorded to Shri G.C.Dwivedi in consonance with the Articles 14 and 16 of the Constitution of India. But this would be an empty formality.

23. In the light of the fact that discrimination in punishment has been held to be illegal by the Apex Court in Tata Engineering Locomotive Co. v. Jitendra Prasad Singh and Another, 2002 SCC(L&S) 909, for the reasons recorded above and observations made, OA is allowed. Impugned order is quashed and set-aside. Applicant shall be entitled to all consequential benefits. No costs.

S. Raju  
(Shanker Raju)  
Member(J)