

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1311/2002

New Delhi this the 2nd day of ^{May} 2003.

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HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A)

HC Sumer Chand
No.1514/PCR
Police Control Room,
Central Zone,
Delhi

...Applicant

(By Shri Arun Bhardwaj, Advocate)

vs.

1. Union of India
Through Commissioner of Police
Police Headquarters,
IP Estate,
New Delhi.
2. Joint Commissioner of Police
Police Headquarters,
I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police
HQ (ESTT.)
Police Headquarters,
I.P. Estate,
New Delhi.
4. Asstt. Commissioner of Police
Central Zone,
PCR: Delhi. Respondents.

(By Shri Vijay Pandita, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant is a Head Constable in Delhi Police. He was served with a notice to show cause on the allegation that while posted with the Central Zone/Police Control Room on the

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intervening night of 22/23.5.1999, the applicant and others stopped a truck near Filmistan cinema at about 11.50 P.M. In the meantime, Deputy Commissioner of Police/Police Control Room reached at the spot and found them questioning the truck driver. On being questioned as to why they had stopped the truck driver, they had given the information which was misleading that the driver was asking about some address. When the Deputy Commissioner of Police asked the driver, he clarified that he belonged to the local area and knew the roads very well. It was felt that they had stopped the truck with mala fide intentions. After considering the reply, the notice of censure was confirmed. The order in this regard reads:-

"A show cause notice for Censure was issued to HC Balbir Singh No.1274/PCR (I/C Van) (PIS No.28760632), HC Dev Nath No.96/PCR (Gunman) (PIS No.29630081) and HC Sumer Chand No.1514/PCR (as a driver) (PIS No.28770659) vide this office No.683-84/R-ACP/C.Zone/PCR, dated 24.5.99 on the allegation that while posted in Central Zone/PCR on the intervening night of 22/23.5.99, they were detailed for duty at PCR Van Oscar-14 from 8 P.M. to 6 A.M. On that night they had stopped a truck near Filmistan Cinema at about 11.50 P.M. In the mean-time worthy DCP/PCR reached at the spot and found them questioning the truck-driver. On asking by the DCP/PCR that as to why they have stopped the truck, they tried to mislead him saying that the driver was asking about some address. When DCP/PCR asked the driver, he clarified that he belonged to a local area and knew the roads very well. It is clear from the above facts that they stopped the truck with malafide intention.

I have carefully gone through the show cause notice and their explanations which are not convincing. Therefore, the notice of

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Censure issued to HC Balbir Singh No.1224/PCR,
HC Dev Nath No.96/PCR and HC Sumer Chand
No.1514/PCR is hereby confirmed.

Let a copy of this order be given to them free of cost. They can file an appeal against this order to the Addl.CP/PCR, New Delhi within 30 days from the date of receipt of this order on a non-judicial stamp paper valued of 75 paise by enclosing a copy of this order, if they so desire."

2. It appears that the said order has become final. Later on, when the respondents were considering the names of eligible officers for inclusion in list D-I (Executive), the name of the applicant was withheld from inclusion in the same on the ground that his past service record was indifferent on grounds of corruption. By virtue of the present application, he seeks a direction that his name should be included in list D-I (Executive) from the date from which the names of his batchmates were so included and to promote him accordingly.

3. The application has been contested and reliance is being placed on the fact that as per Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980, promotion from one rank to another and from lower grade to the higher grade in the same rank should be made by selection tempered by seniority. Efficiency and honesty should be the main factors. The Departmental Promotion Committee enjoys full discretion to devise its own methods and procedure for objective assessment as to the suitability of candidates who are to be considered. Certain guide-lines kept in

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view by the Departmental Promotion Committee while admitting the names of the candidates as fit or unfit for list D-I (Executive) are as under:-

- (i) officers having 3 Good or above reports and without any below average or adverse report may be empanelled where the minimum required qualifying service in the lower rank has been prescribed as 5 years or less than 5 years. However, in cases where the required qualifying service in the lower rank if prescribed more than 5 years, the Departmental Promotion Committee should see the records with particular reference to confidential reports for the years equal to the required qualifying service.
- (ii) the service record of the officers during preceding 10 years in the particular rank was to be taken into account with particular reference to the gravity and continuity of punishments till date.
- (iii) officers who were awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty were to be ignored for that period.

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(iv) officers whose names were borne on secret list of doubtful integrity were not to be considered fit.

(v) officers who were awarded censures during the last 6 months with no other punishment were to be recommended for promotion. However, the effect of censure by debarring the official from promotion by 6 months from the date of award was to continue.

4. During the course of hearing, our attention was being drawn towards certain Standard Orders purported to have been passed which the respondents were directed to place on the record. The Standard Orders/circulars have been placed on the record and pertaining to major/minor punishment involving charges of corruption, moral turpitude, the Standing Order reads:-

"Officers who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property or major punishment within 2 years on charges of administrative lapses, from the date of consideration may not be empanelled."

However, if it is a simple censure, the Standing Order says:-

"Officers who have been awarded censures

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during the last 6 months with no other punishment can be allowed to be brought on promotion list. However, the effect of censure by debarring the official for promotion by six months from the date of award, shall continue."

5. The learned counsel for the applicant taking advantage of the said Standing Order eloquently pointed that the award of censure in the present case cannot be described to be involving moral turpitude and, therefore, the promotion of the applicant in this regard could not be withheld. The argument of the learned counsel of the respondents was to the contrary.

6. The question as to what would be moral turpitude has not been defined under the Delhi Police Act or the Rules thereunder. Necessarily, we have to give the normal meaning to this expression. We need refer to Rule 5 of the Delhi Police (Promotion and Confirmation) Rules, 1980 which clearly states that the general principle for promotion from one rank to another depends a grate deal on efficiency and honesty which are major factors.

7. In the case of **Baleshwar Singh v District Magistrate and Collector, Banaras and others**, AIR 1959 ALLAHABAD 71, the expression "moral turpitude" had been considered. It was held:-

"(23) The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the

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person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act, and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

The Supreme Court in the case of **Pawan Kumar v. State of Haryana and another**, (1996) 4 SCC 17 while considering the question of termination of services also looked at the expression "moral turpitude" and held:-

"12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2.2.1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2.2.1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:-

"...The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not.

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led

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to the act was a base one.

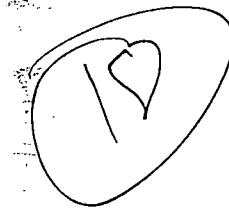
(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society."

Similarly, in the case of **Allahabad Bank and Another v. Deepak Kumar Bholu**, (1997) 4 SCC 1, almost similar meaning was given to the expression "moral turpitude" holding that it depends upon the facts of each case, but whatever may be the meaning which may be given to the term, it appears that one of the most serious offences involving moral turpitude would be where the person employed in a bank indulges in forgery etc. Almost similar was the view expressed by the Delhi High Court in the case of **Hareesh Kumar Mishra v. Union of India and others**, 96(2002) DLT 28.

8. From the aforesaid, we can conveniently hold that "moral turpitude" is not an expression which can be defined by this Tribunal, but it would involve an act on the part of the delinquent which is base and otherwise it would be contrary to justice, honesty, modesty or good morals. If it implies depravity and wickedness of character, it must be termed as "moral turpitude".

9. Though on perusal of facts, we find that while the Deputy Commissioner of Police was informed by the concerned truck driver that he was familiar with the area, he (Deputy Commissioner) did not deem it necessary to probe further as to

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why he (truck driver) had been stopped and what enquiries were being made from him.

10. But we need not delve further into this controversy. Perusal of the order clearly shows that the applicant had stopped the truck and was making certain enquiries from the driver. When the applicant was enquired, he gave a misleading statement that the truck driver was enquiring about certain addresses. The version of the truck driver was that he was familiar with the locality. The finding, therefore, by virtue of which the punishment of censure was imposed was with a rider that the applicant stopped the truck with mala fide intentions.

11. The said finding that the applicant and others stopped the truck with mala fide intentions had become final. Since the applicant did not challenge the said finding, it would necessarily mean that he accepted the same. Once censure was imposed with the condition that the applicant stopped the truck with mala fide intentions, the expression "mala fide" in the order clearly shows that there is involved moral turpitude. In face of it, we have least hesitation in concluding that the applicant was rightly ignored because of the said censure involving moral turpitude.

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Accordingly, there is no ground to interfere.

12. For these reasons, the application being without merit must fail and is dismissed. No costs.

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(S. K. Malhotra)
Member (A)

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(V. S. Aggarwal)
Chairman

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