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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1752/2002

New Delhi this the 20<sup>th</sup> day of December, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Rai Singh  
S/o Late Shri Diwan Singh,  
R/o House No.A-3, Sadh Nagar-II,  
Palam Colony,  
New Delhi-110 045.

-Applicant

(By Advocate: Dr. Kanwal Sapra)

-Versus-

1. Union of India  
Through: The Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. The Commissioner of Police,  
Delhi Police, M.S.O. Building,  
Police Head Quarters,  
I.P. Estate, New Delhi.
3. The Joint Commissioner of Police (INT)  
Delhi Police, M.S.O. Building,  
Police Head Quarters,  
I.P. Estate, New Delhi.
4. The Deputy Commissioner of Police,  
Special Branch,  
M.S.O. Building, Police Headquarters,  
I.P. Estate, New Delhi.

... Respondents

(By Advocate: Mrs. Rashmi Chopra)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 8.10.97, imposing upon him a minor penalty of censure as well as appellate order dated 12.8.98, maintaining the punishment.

2. Applicant who was working as SHO in PS Sultanpuri was served with a show cause notice dated 11.8.97 proposing a minor penalty of censure on the ground that although he received a complaint of one Suresh Kumar in May, 1996 the said complaint was kept pended till 1996 without any reasons. Applicant responded to show cause

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notice maintaining that no compliant was received as alleged in May, 1996. Disciplinary authority by an order dated 8.10.97 confirmed the minor penalty of censure as applicant had not appeared in the OR and his explanation was not found satisfactory.

3. Applicant filed an appeal against the punishment of censure contending that a complaint vide diary No.3894-C was received at PS Sultanpuri of one Chander Pal and a show cause notice issued to one ASI Dharam Pal Singh was issued on 1.4.97 was vacated on 21.12.97.

4. Appellate Authority taking cognizance of complaint filed on 5.2.96 by Suresh Kumar held applicant guilty of the charge and maintained the punishment stating that the date of complaint has been erroneously mentioned as May 1996 instead of February 1996 in the show cause notice and on verification it was found that the aforesaid complaint was received vide diary No.57 on 5.2.96 and the same has been kept pended whereas on reminder of complaint of 22.11.96, an inquiry was conducted which disclosed these facts.

5. Applicant preferred a revision petition to the Commissioner of Police and in the light of no jurisdiction, the same was rejected on 19.6.2001, giving rise to the present OA.

6. Learned counsel for the applicant Shri Sapra contended that the show cause notice is arbitrary without specifying the exact details of the imputation,

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though the appellate authority admitted that erroneous date of previous complaint was mentioned as May 1996 whereas the same was February 1996. The same has not been put to applicant, with the result he has been deprived of a reasonable opportunity to effectively defend against this allegation and the punishment was maintained on the basis of the fact that complaint was received in May 1996 whereas no complaint was received and complaint of one Chanderpal was received in May 1996 on which show cause notice issued to ASI Dharam Singh has already been vacated. He alleges hostile discrimination under Article 14 and 15 of the Constitution of India.

7. By an order dated 16.12.2002, respondents have been directed to produce the original records. The same has been produced which shows that the complaint received in the office of ACP, ITO on 5.2.96 written by Suresh Kumar on 2.2.96 was marked to SHO Sultanpuri, i.e., applicant. Moreover, applicant himself had sent a report on 10.2.97 forwarding the complaint of Chanderpal and Suresh Kumar. In the complaint made on 26.11.96, there has been a reference to the earlier complaint filed through diary No.57, on which no action has been taken.

8. Shri Sapra further states that the disciplinary as well as appellate authorities have not considered the plea of the applicant and as the applicant remained on leave from 21.11.96 to 25.11.96 the complaint was received on 22.11.96 and was sent to ACP to conduct personal enquiries. Parties have been called by officiating SHO, Gajraj Singh and the complaint was marked to ASI Dharam Singh on 21.11.96. These directions of ACP

(4) have never reached applicant. He further contends that if an error has crept in the show cause notice as regards to the date of complaint, a fresh notice be issued to applicant with an opportunity to mete out the charge against him. Applicant lastly contends that the order passed are without application of mind and minor penalty of censure is blot to his excellent service record.

9. On the other hand, respondents' counsel strongly rebutted the contention of the applicant and stated that inadvertently date February 1996 was referred to as May 1996 in the show cause notice but from the perusal of the documents, it is apparent that complaint was received through diary No.57 from Suresh Kumar on 5.2.1996 and was marked to the SHO but despite this the same kept pended and only on the reminder of the complainant on 26.11.96, matter could be proceeded. She further states that copy of the complaint clearly shows that the same was made on 5.2.96 and further more in reply to the show cause notice, applicant had referred to diary No. 3894-C dated 6.5.96 but has avoided to answer the fact of complaint received in February 1996. It is further stated that applicant himself in view of diary No.3894-C dated 6.5.96 has made reply to the complaint of Chander Pal and Suresh Kumar clearly shows that they were two separate complaints and the complaint made in 1996 was of Chander Pal whereas in February 1996, it is filed by complainant Suresh Kumar. Original records have been brought to establish the same. Further more, letter dated 7.8.98 from Additional DCP, North West District clearly shows that the complaint dated 5.2.96 in respect of Suresh Kumar was received by diary No.57 but no action was taken on the said complaint and on

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another application filed on 21.11.96 and inquiry was conducted by the ACP Sultanpuri where applicant was instructed to call upon both the parties but this order was not obeyed.

10. Learned counsel for the respondents further contended that it does not make difference whether the date of complaint was May 1996 or February 1996 and the fact of complaint being filed by the complainant on 5.2.96 is established beyond any doubt. Although applicant was filing a copy of complainant of Suresh Kumar submitted to Additional DCP on 21.11.96 had deliberately avoided the date of complaint on 5.2.96 and also substituted diary number 57 to 3894-, showing his malafides.

11. Applicant counsel re-iterated his pleas taken in the OA in his rejoinder.

12. I have carefully considered the rival contentions of the parties and perused the material on record. As crystallised through various pronouncements the jurisdiction of this Tribunal in a judicial review cannot be exercised for redressal of evidence or to go into the correctness or truth of the charges, if there exists material in support of the allegation, finding of guilt cannot be interfered unless vitiated by procedural illegalities. As held by the Apex Court in State Bank of Patiala & Others v. S.K. Sharma, JT 1996 (3) SC 722 violation of substantive provisions of law would per se be not sufficient to vitiate the proceedings if it is not established that such illegality has seriously prejudiced

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the delinquent official. It is also held that one who abandons his right and the same is foregone and cannot be raised.

13. In the light of what has been held by the Apex Court from the examination of the show cause issued to applicant it is not disputed that the same has been issued on the premise that complaint of Suresh Kumar though received in 1996 kept pended till November, 1996 without any reasons. It is also proved that on the basis of the record that the complaint was filed in February 1996 and was registered through diary No.57. This fact has forthcoming in the subsequent reminder of the complainant in his application dated 21.11.96. Applicant who maintained in his reply that no complaint was received from Suresh Kumar in 1996 whereas complaint of Chanderpal filed in May, 1996 ensued show cause notice to ASI Dharampal which was vacated by the authorities.

14. In so far as the ground that a new show cause notice could have been issued apprising applicant about the fact of complaint filed and dealt with by the applicant on 5.2.96 is concerned, applicant had an opportunity against the appellate order to file a revision petition to the next higher authority complaining this fact of maintaining the punishment on a different ground but from the perusal of the revision petition on the file not even a whisper has been stated about the violation of the principles of natural justice. As such applicant himself has abandoned his right and in that event he cannot take recourse to prejudice in the light of the decision of the Apex court in S.K. Sharma's case (supra).

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15. Moreover, I find that even if the date which has been inadvertently figured as May, 1996 in the show cause notice was February, 1996 applicant had no reasonable explanation as to why complaint has remained pended with him for such a long period. Applicant cannot resort to his leave from 21.11.96 to 25.11.96 as earlier to that once the complaint has been tendered to him on 5.2.96 the authenticity of the document as kept in the record of respondents and reiterated in their appellate order on inquiry from the Additional DCP cannot be found fault with. These documents are maintained as part of the register and there is no malice alleged against respondents as to falsification of the record. In the light of this record it is conclusively proved that a compliant was filed by Suresh Kumar on 5.2.96, which despite being forwarded to applicant no action was taken which resulted in another grievance raised through application dated 21.11.96 and on inquiry revealed that complaint has been kept pended without any reasonable explanation by applicant.

16. The misconduct alleged against applicant is pending the complaint without any reasons and in absence of any reasons assigned or forthcoming during the arguments the misconduct of applicant is amply proved and as he has been afforded a reasonable opportunity and no legal infirmity of the rules in the procedure has been pointed out the punishment awarded cannot be interfered with in a judicial review.

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17. In the result and for the forgoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)  
Member(J)

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