

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1901 of 2002

New Delhi this the 17th day of February, 2003.

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

S.K. Rathi
S/o Shri S.S. Rathi
R/o H.No.6128, Pkt C-6,
Vasant Kunj, New Delhi.

...Applicant

(By Advocate : Shri V.K. Sharma)

-Versus-

1. Union of India
through Secretary,
Home Ministry,
New Delhi.
2. Commissioner of Police,
Delhi Police Headquarters,
ITO, New Delhi.
3. Jt. Commissioner of Police,
Delhi Police, Souther Range
Delhi.
4. Dy. Commissioner of Police (S/W),
Delhi Police
New Delhi.

...Respondents

(By Advocate : Shri Ajesh Luthra)

ORDER

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 26.9.2000, imposing upon him a minor penalty of censure as well as order dated 19.2.2001 passed by the appellate authority, confirming the penalty and also the order passed on revision on 12.7.2001.

2. Applicant during March 2000 was working as SHO at Police Station Dabri and proceeded on leave from 10.3.2000 to 14.3.2000. In his absence Additional SHO was looking after the work of applicant.

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3. On a raid by operation cell/SWD a satta racket was busted at Pradhan Chowk where seven persons have been arrested and FIR No.240/2000 under Section 349/95/55 of Gambling Act was registered at PS Dabri. Applicant was served upon a show cause notice for a minor penalty of censure on the ground that although a satta was busted on 12.3.2000 the division and the beat staff should have been aware of the illegal activities being run in the area and the SHO has failed to brief them in this regard.

4. Applicant preferred his reply to the show cause. Disciplinary authority by an order dated 26.9.2000 confirmed the punishment. Applicant preferred an appeal against the minor penalty of censure, inter alia, taking a plea that at the time when the case was registered he was on casual leave and the Additional SHO could have briefed the concerned staff.

5. Appeal of applicant was rejected on 19.2.2001 holding that applicant could not have been completely ignored of such a prominent place and in view of the lapse punishment is confirmed.

6. Applicant preferred a revision petition, which was rejected on the ground that Commissioner has no jurisdiction under Section 25 of the Delhi Police (Punishment & Appeal) Rules, 1980.

7. Shri U.K. Sharma, learned counsel for applicant contended that applicant has been punished mechanically without application of mind as his plea of remaining on leave from 10.3.2000 to 14.3.2000 and the Additional SHO should have been briefed the staff has not

at all been taken into consideration by the appellate authority. He contends that there is no misconduct to warrant any punishment and the impugned orders are not legally sustainable based on no misconduct and evidence.

8. On the other hand, learned counsel for respondents Sh. Ajesh Luthra vehemently rebutted the contentions and stated that in reply to the show cause plea of having proceeded on leave on the date of registration of case has not been taken and the same has been raised for the first time in the appeal, which is an after thought.

9. Shri Luthra further stated that although it is admitted that Additional SHO was looking after the work of SHO on 12.3.2000 at the time of busting of satta racket and registration of case but merely remaining on casual leave would not absolve applicant of his responsibility being SHO and overall incharge of the area and the illegal activities are not possible to run on a day but has been planned for a long time. Division officer as well as beat staff should have been aware of these illegal activities and as applicant has failed to brief the division as well as beat staff from time to time to remain alert he has failed to exercise control over the illegal activities.

10. Sh. Luthra defended the orders passed by the respondents contending that the same are reasoned and do not suffer from any legal infirmity.

11. I have carefully considered the rival contentions of the parties and perused the material on record. From the perusal of the show cause notice it transpires that the solitary incident of satta racket going

on at Arora Restaurant was unearthed by the operation cell on the occasion of cricket match being played between India and South Africa on 12.3.2000. There is nothing in the show cause notice to indicate that the satta racket was being run earlier to this match as well or some preparation had taken place earlier to that. It is not disputed and as admitted by the respondents applicant had remained on casual leave from 10.3.2000 to 14.3.2000 and the satta racket was busted on 12.3.2000. During the absence of applicant additional SHO was functioning as SHO and it was incumbent upon him to have briefed the staff in view of the cricket match played on 12.3.2000. It was his onerous duty to hold the brief which is done twice a day in the police station by the SHO. The fact that applicant has proceeded on leave and before that he had been briefing the division and beat staff and in absence of any material to show that satta was being conducted during the period applicant was on duty, merely because a FIR has been lodged on a solitary incident of a cricket match played on 12.3.2000, by no stretch of imagination indicate that applicant was negligent or had failed to supervise the staff. If the plea of respondents is accepted the same goes contrary to Section 24 of the Delhi Police Act, 1978, which stipulates that a person on leave shall not be treated as on duty.

12. In a disciplinary proceeding whether for a minor or major penalty a misconduct is to be proved and the allegations alleged should constitute a misconduct and be proved on some evidence or material in possession. Merely on suspicion and surmises it cannot be proved. The contention that plea of remaining on casual leave has not been putforth in reply to show cause notice would not be tenable as applicant has taken this specific plea before

the appellate authority which failed to take this into consideration and through a bald a mechanical order confirmed the punishment merely on surmises by holding that applicant could not have been completely ignored of such a prominent place.

13. Disciplinary authority's order is also a non-speaking without application of mind.

14. In order to establish that an imputation is a misconduct some material is to be brought on record. In my considered view applicant who was on casual leave cannot be held to be guilty of not briefing the staff which was to be performed by the person, i.e., Additional SHO who took over the charge from applicant. In absence of any material to the effect that satta racket was going on earlier to 12.3.2000 applicant cannot be held guilty of lack of supervision as during absence and on leave he cannot be held as such.

15. In my considered view the punishment imposed and confirmed is merely on suspicion and surmises without any material or evidence. Moreover, such a punishment does not pass the test of a reasonable prudent man and in a judicial review the same can be interfered with in the light of the decision of the Apex Court in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603.

16. In the result, for the foregoing reasons OA is allowed and the orders passed by the respondents are not legally sustainable and are accordingly quashed and set aside. Applicant shall be entitled to all consequential benefits. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)