

Central Administrative Tribunal
Principal Bench

OA No.3310/2002

New Delhi this the 3rd day of December, 2003

Hon'ble Shri Shanker Raju, Member (J)

Narender Singh
S.I. No. D-3537
(None Present)

-Applicant

Versus

Commissioner of Delhi Police,
PHQ, M.S.O.. Building
I.P. Estate, New Delhi.

-Respondent

(By Advocate: Shri Saurabh Ahooja, proxy for
Shri Ajesh Luthra)

ORDER (Oral)

Applicant impugns respondents' order dated 13.6.2000 imposing upon him a penalty of censure as well as appellate order dated 9.3.2001 up-holding the punishment.

2. Briefly stated the factual matrix which appears on perusal of the pleadings is that the applicant while posted at Police Station Kalkaji on an vigilance enquiry conducted on a complaint of one Uday Pratap revealed a theft in Lyod Insulation India Ltd. was entrusted with the complaint which was duly received by him on 12.11.1999 had failed to register the case and kept the complaint pending for a period of three months.

3. A show cause notice calling him to explain was served upon him on 12.3.2000.

4. As the applicant has not responded and proceeded on leave w.e.f. 27.5.2000, punishment of censure stood confirmed.

5. An appeal preferred against the order was rejected on 9.3.2001 giving rise to the present OA.

6. None appeared for the applicant even on the second call as the matter is listed in regular hearing, OA is disposed of in terms of Rule-15 of CAT (Procedure) Rules, 1987.

7. Applicant in the OA contends that without affording a hearing, the appeal was dismissed as per Notification dated 15.3.86 pertaining to minor penalty under the Deihi Police (Punishment and Appeal) Rules, 1980. It is contended that punishment mentioned at Sl No.(Viii) which are minor punishments can be imposed upon a police officer after serving a show cause notice and after considering the written reply as well as oral deposition. As no such procedure was followed the applicant who had been entrusted him jobs regarding investigation which was within the knowledge of the disciplinary authority, has been deprived of a reasonable opportunity to defend, which is in-violation of principle of natural justice.

8. On merit, it is contended in OA that the action was initiated on 12.11.99 and after being assigned to the applicant on enquiries, it was a case of criminal misappropriation and accordingly a case

under Section 408 later on was registered as the applicant proceeded on leave from 27.5.2000 to 26.7.2000 sanctioned by the Additional DCP, he could not file an effective reply. Lastly, it is contended that the applicant has a clean service record the punishment would be an impediment to his future promotional avenues.

9. On the other hand, respondents' counsel took the objection of limitation and stated that whereas the punishment was imposed on 13.6.2000 and the appeal was rejected on 9.3.2001, the revision was rejected on 14/3/2002 as the revisionary powers no longer vested with the Delhi Police the OA is barred by limitation. On merits, it is contended that the applicant received a copy of notice dated 9.3.2000 on 12.3.2000 and has failed to file reply within 15 days. In the show cause notice, it is made clear that if the reply is not filed, it would be presumed that the applicant has nothing to say in his defence and the case would be decided on merit ex-parte. Applicant who remained on leave w.e.f. 27.5.2000 for clear two months from 27.3.2000 till 27.5.2000 had not prepared any reply. It is stated that the applicant has not been deprived of a reasonable opportunity rather he failed to avail the opportunity despite being extended to him. As regards his plea that the investigation was entrusted to the Head Constable. ACP Kalkaji at the time of forwarding the report of 12.2.2000 made it obligatory upon the applicant to conduct the enquiry and this defence is an after thought.

10. In the rejoinder, applicant reiterated his plea taken in the OA.

11. I have carefully considered the rival contention of the parties and perused the material on record.

12. In so far as limitation is concerned on 14.3.2002, applicant was apprised that no revisionary power lies, the present application filed on 13.12.2002 is barred by limitation as such preliminary objection is over-ruled.

13. In so far as merit is concerned, applicant who had been issued a show cause notice was made clear to file a reply within 15 days from its receipt, failing which presumption that he has nothing to say in defence should be construed and the matter would be decided an ex-parte. The afresaid notice was received by the applicant on 12.3.2000 but yet he had not asked for any explanation nor preferred any reply to the show cause. The grievance of the applicant is that no personal hearing was accorded to him. Once the applicant has not availed an opportunity to file reply, he had not even asked for an oral hearing, which was not to be given suo moto but if it is desired by the concerned officers in the light of Rule-6 of Delhi Police (P&A) Rules, 1980. As no request had been made the ground fails.

14. Denial of reasonable opportunity and violation of principles of natural justice would apply in a case where prima-facie the denial is on record despite clear 15 days to file reply and in absence of any request for extension for time and the fact that apart from the busy schedule of the applicant in investigation, it has not been disputed that he remained in Delhi before he proceeded on leave on 27.5.2000 for a period of two months he has himself not availed the opportunity as such. Rightly, the disciplinary authority took an ex-parte decision. It cannot be faulted.

15. On merits as well, applicant to whom the complaint was specifically marked to register the case despite his availability in Delhi had not registered a case and Delayed the registration for three months. It is often on the intervention of vigilance that the case was ultimately registered cannot be said to be a case of no misconduct.

16. As no legal infirmity is found either in the procedure followed or the punishment imposed which is commensurate with the misconduct, OA being bereft of merit is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

cc.