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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1463/2002

New Delhi this the 29th day of October, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

ASI Kishan Chand(D-3002/D),
S/o Sh. Ramji Lal,
R/o 91/5, Nasirpur Colony,
Palam, PS Dabri, Delhi. -Applicant

(By Advocate L.R. Khatana)

-Versus-

1. NCT of Delhi through
Chief Secretary,
Delhi Secretariat Player's Building,
I.P. Estate, New Delhi.
2. Commissioner of Police, Delhi,
Delhi Police Headquarters,
MSO Building, Indraprastha Estate,
New Delhi.
3. Additional Commissioner of Police (Security),
Vinay Marg, Chanakya Puri,
New Delhi.
4. Dy. Commissioner of Police (Security),
Enquiry Officer,
Vinay Marg, New Delhi. -Respondents

(By Advocate Shri George Paracken)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

By this OA, applicant, an Assistant Sub Inspector, in Delhi Police impugns respondents' order dated 10.4.2000, initiating a joint departmental enquiry against the applicant. He has sought quashment of the same.

2. Applicant on 25.5.98 was posted at Police Post Kapeshera under Najafgarh Police Station. On receipt of an information as to plantation of a bomb at Fun and Food Village, received through PCR, applicant alongwith constable Dharampal reached the village and on entering Fun and Food Village he was assaulted by the owner and prevented from going inside. Later on, incharge Police

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Post SI Dharampal arrive there, but owner prevented the police officers from performing their duties.

3. Subsequently, SHO Najafgarh also arrived as well as ACP Najafgarh. Later on the call was found to be a hoax. Applicant informed this to the ACP and who further sent comments to the DCP of the District and after accord of sanction under Section 195 Cr.PC case FIR No.229/98 was registered against the owner and workers of the Fun and Food Village under Sections 353/186/34 IPC.

4. Subsequently, on complaint of the owner of Fun and Food Village against other police officers without alleging any imputation against the applicant a PE was held on the orders of the Lieutenant Governor, Delhi by the DCP (Vigilance) wherein he has held the applicant guilty of not taking any assistance of security guards and also making a false statement by registering a case against the owner. On the basis of the preliminary enquiry a DE was ordered against the applicant by the DCP on 10.4.2000 on the following allegations:

"It is alleged against Inspr. Rajesh Kaushik, the then SHO/Najafgarh and S.I. Dharam Pal, the then I/C P.P. Kapashera, that they had been forcing the owner of the Fun and Food Village Sh. Balwant Chawla to entertain their people in the park free of cost and also demanded protection money. They also demanded money for the marriage of the daughter of DCP/South-West from the owner of the Fun and Food Village Kapashera and on his refusal, they were threatened to face the consequences.

In the afternoon on 25.5.98 at about 6.20 P.M. a Police Party headed by S.I. Dharam Pal, I/C P.P. Kapashera entered the Fun & Food Village Park on the pretext of a hoax bomb call and created panic amongst the visitors. It is alleged that the Police Party was in the park, well before the receipt of bomb call, which indicates that it was

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pre-planned, and a false case of obstructing police from carrying out their duties was registered against 1) Sh. Balwant Chawla (M.D.) (2) Sh. Santosh Chawla (Director) and (3) Sh. Jagdeep Singh, Manager Fun & Food Village u/s 353/186/34 IPC FIR NO.229/98.

It is alleged against ASI Kishan Chand, No.3302/D that he was marked DD NO.37 dated 25.5.98 at 6.08 P.M. about the bomb call. He alongwith Constable Dharmender reached to the spot and entered the Fun & Food Village and started shouting inside, that there was bomb inside the park and asked all the visitors to go out. This created panic among the visitors, and problem for the management. The management of Fun & Food Village requested them to take the help of their Security staff and search in a proper way, but they did not listen to them and started unnecessary arguments. In such circumstances, efforts should have been made to contact the management and ensure the checking in proper and effective way. In this case no assistance was sought by ASI Kishan Chand and Const. Dharmender but they loudly started ordering the people to go out as there was a bomb in the park. It might have caused stampede. Such action is highly undesirable as the entire area is protected by fencing walls and Security staff. Even if the premises was to be vacated, it could have been done in a systematic way by making announcement on the Public Announcement System. But they failed to do so and later on they gave false statements, which resulted in the registration of a false case u/s 353/186/34 IPC.

The record of the PCR Van present on the spot indicates that initially the Police Party had gained entry inside the park and PCR van flashed the message that I/C P.P. with staff was searching the premises and later on they came out. SHO/Najafgarh after reaching the spot did not take any action and even did not try to enter the park, but simply flashed a wireless message that the local police was being refused entry to the park. It was only after the arrival of ACP/Najafgarh that the local police made an entry and conducted the search. It was the duty of S.I. Dharam Pal, as I/C P.P. to get the help of Security staff of the Fun & Food Village and take the management into confidence. But he failed to do so and created a scene, which facilitated in the registration of a case and he knowingly registered a false case against Sh. Balwant Chawla and others.

The above act on the part of Inspr. Rajesh Kaushik, No.D-1/341, the then SHO/Najafgarh, S.I. Dharam Pal, NO.D/3453, the then I/C P.P. Kapashera, ASI Kishan Chand No.3302/D and Constable Dharmender, No.690/SW 1140/Sec.

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amounts to gross misconduct and misuse of powers in the discharge of their official duties which renders them liable to be dealt with departmentally under rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980.

I, M.S. Sayed, Addl. Commissioner of Police, Security, Delhi hereby order that Inspr. Rajesh Kaushik, No.D-1/341, S.I. Dharam Pal, No.D/3453, ASI Kishan, No.3302/D and Const. Dharamender, No.690/SW-1140/Sec. may be jointly dealt with departmentally. The enquiry be conducted by Sh. Mahabir Singh, DCP/Security, Delhi on day to day basis and findings be submitted to the undersigned expeditiously as per the laid down instructions."

5. Applicant approached this court at this stage and by an order dated 30.5.2002 further proceedings in the departmental enquiry have been stayed.

6. On the basis of the preliminary enquiry the prosecution has moved the court of Metropolitan Magistrate for cancellation of the FIR and on revision the Additional Session Judge by an order dated 27.1.2001 remanded back the case to the Magistrate for application of mind afresh. Accordingly, learned Magistrate took cognizance of the offence and summoned the accused. Against this the accused went in for criminal revision before the High Court of Delhi and by an order dated 2.2.2001 High Court upheld the decision of the Metropolitan Magistrate, taking cognizance of the offence.

7. Subsequently, the Magistrate by an order dated 18.4.2002 summoned the accused, having found them prima facie sufficient grounds to proceed against them.

8. Sh. L.R. Khattana, learned counsel for the applicant, taking resort to the decision of the Apex Court in Union of India v. J. Ahmed, AIR 1979 SC 1022 contended

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that the allegations levelled against him in the enquiry do not constitute a misconduct and stated that mere negligence in performance of duties or slight lapse in performance or error of judgement in evaluating the developing situation though may be negligence in discharge of the duty but would not constitute a misconduct unless the same is culpable and resultant damage would high. In this conspectus it is contended that from the perusal of the DE order, summary of allegations and Annexures it is apparent that the applicant has not committed any misconduct in so far as the allegations levelled against him of not taking assistance of security staff while searching for the bomb and not cautioning the persons present there on public address system. It is stated that on receipt of the call it was the foremost duty of the applicant to have reached the spot and get the enclosure vacated to ensure that no one is hurt. In furtherance of this applicant at the spur of movement as per his judgement bonafidely started cautioning the people to go out does not cast any stampede. As such the applicant has apparently with utmost sincerity and devotion performed his duty assigned to him which does not amount to a misconduct.

9. It is further stated that had the applicant on receipt of the call has not acted he would have been certainly guilty of the misconduct, entailing dismissal from service.

10. Learned counsel on the second ground of making false statement, which resulted in registration of a case, contended that as per the decision of the Apex Court in Union of India v. Upendra Singh, 1994 (1) SLR 831 has

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ruled that in cases of interference at an interlocutory stage by the Tribunal in a disciplinary proceeding the same is permissible if from the perusal of the charge no misconduct is made out or the chargesheet issued is contrary to law. What is precluded is to go into the correctness or truth of the charge.

11. In this backdrop learned counsel states that in so far as the charge of making false statement is concerned, the same is contrary to law. By referring to the complaint made by the owner of Fun and Food Village it is stated that nothing has been attributed to the applicant in this complaint. Moreover, in the PE applicant was found instrumental in the episode as well his connivance with other officers has not been established. According to him, as per circular order dated 19.11.93 issued by the Commissioner of Police regarding registration of case under Section 353/186/34 IPC it has been decided that the case should not be registered without bringing these facts to the notice of the ACP and he shall visit the spot and examine the charges and in the event the complaint is found trustworthy he should send his special report to the DCP who accorded prosecution sanction under Section 195 Cr.PC. According to him as the applicant was manhandled and was prevented from performing his official duties and the ACP through his report dated 1.6.98 was satisfied regarding the authenticity of the complaint and referred the matter to the DPC who later on accorded his sanction under Section 195 Cr.PC on 13.9.98. The prosecution application for cancellation of FIR has been turned down by the High Court and the Magistrate later on took cognizance of the offence and summoned the accused persons. According to him he has

acted in accordance with law and unless the competent court of criminal jurisdiction acquits the accused persons holding that the complaint was false the allegation of making false statement is contrary to law and would not amount to a misconduct.

12. On the other hand, respondents' counsel strongly rebutted the contentions and stated that the applicant had failed to take the systematic action which could have caused stampede and on his false statement a case has been registered.

13. Moreover, learned counsel states that at this inter-locutory stage the Tribunal has no jurisdiction to interfere in the matter and to go into the truth or correctness of the charge. As the PE has held the applicant guilty of the charge on which an enquiry has been proceeded to the applicant who has been found to have committed misconduct would be given ample opportunity to defend in accordance with the rules. He places reliance on a decision of the Apex Court in Union of India v. A.N. Saxena, 1992 (3) SCC 123 to substantiate his plea.

14. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as interference of the Tribunal in the disciplinary proceedings at an inter-locutory stage is concerned, the Apex Court in Upendra Singh's case has laid down the following ratio:

"6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if

any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons and Ors. (1992 Supp.(2) S.C.C. 312). The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Courts sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

15. Moreover, in so far as the misconduct is concerned, the Apex Court in Union of India v. K.K. Dhawan, 1993 (2) SCC 56 held as follows:

"Certainly, therefore, the officer who exercises judicial or quasi-judicial powers act negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the order with reference to the nine assessments may be questioned in appeal or revision under the Act.

But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness of misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "through the bribe may be small, yet the fault is great".

The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated".

16. Further the Apex Court in State of Punjab Vs. V.K. Khanna 2001 (2) SCC 330 reads as follows:-

"The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the court and no strait-jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness: And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed-it is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not".

17. Moreover, the Apex Court in N.B. Nagarkar v. Union of India, 1997 (7) SCC 409 held that initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. The suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent official.

18. If one has regard to the aforesaid rulings the irresistible conclusion which can be derived is that in a judicial review the interference of the Tribunal in a disciplinary proceeding at an inter-locutory stage cannot be excluded Completely. When the allegations alleged from the perusal of the chargesheet and other Annexures do not constitute a misconduct and where the chargesheet is issued contrary to the law the Tribunal can interfere at the inter-locutory stage and take remedial steps by setting aside the disciplinary proceedings.

19. In so far as the misconduct is concerned, the Apex Court in J. Ahmed's case (supra) has observed as follows:-

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce V. Foster) (1886) 17 QBD 536 (at P.542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws V. London Chronicle (Indicator Newspapers)]. (1959) 1 WLR 698. This view was adopted in Shardaprasad Onkarprasad Tiwari V. Divisional Supdt., Central Railway, Nagpur Divn., Nagpur, 61 Bom LR 1596: (AIR 1961 Bom 150) and Satubha K. Vaghela V. Moosa Raza, (1969) 10 Guj

LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd. V. Workmen, Miss Shanti Patnaik, (1966) 2 SCR 434: (AIR 1966 SC 1051) in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India (1967) 2 SCR 566: (AIR 1967 SC 1274), the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgement would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this court in P.H. Kalyani v. Air France, Calcutta (1964) 2 SCR 104, wherein it was found that the two mistakes committed by the employees while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and therefore the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and 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 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 open the productive of more harm than deliberate wickedness or malevolence. Living aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signalling in a train on the same track where there is a stationary train causing head long collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life.

Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op Department Stores Ltd. (1978) 19 Guj.LR 108 at p.120). But, in any case failure to attain the highest standard of efficiency in performance of duty permitting an inference negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

20. In the light of the aforesaid ratio let us examine the allegations levelled against the applicant and whether those constitute misconduct or not? Applicant has been alleged to have misconducted and misused the powers in discharge of his official duties on the following counts:

(i) At the time when the applicant entered Fun and Food Village he started shouting as to the bomb inside the park and asked the visitor to go out. He had not taken steps for effective checking in a proper manner by incorporating the local staff of the restaurant and also using the public address system.

(ii) Applicant has been alleged to have given false statement, resulting in registration of a false case under Sections 353/186/34 IPC.

21. In our considered view applicant in pursuance of an information received through PCR and Wireless Message as to the bomb scare went to the spot and to his best ability and bonafidely in discharge of his duties started informing the public to leave the complex to ensure that nobody is hurt. In such a situation it is to be seen whether this act of the applicant amounts to any culpable negligence in performance of duties or not, ^{it} was only the culpable negligence which results in resultant high damage would constitute a misconduct. As held by the

Apex Court in J. Ahmed's case (supra) lack of efficiency or attainment of highest standard in discharge of duties would not, per se, constitute a misconduct. In order to point out a misconduct it has to be shown that negligence and lapse or error of judgment in evaluating the developing situation may be negligence but in absence of any culpability and resultant heavy damage this error can be only indicative of only negligence and carelessness so alleged cannot be a misconduct.

22. Applicant had acted in discharge of his duties and even if there was an error of judgement in evaluating the developing situation as he failed to take the assistance of local security or had not warned the public and and public address system would not amount to culpable negligence which could have resulted in a heavy damage. There was no culpability in such an action.

23. In a situation where the sudden information regarding plantation of the bomb is received the force which immediately arrives in a spur of movement and limited time as it is not certain as to where the bomb is planted or the time at which is to go of. Applicant as a police officer has a foremost duty to clear the space so that in case of explosion human life can be saved. In this furtherance the applicant starting shouting cautioning the public to leave the complex. At that movement the owners who do not want their restaurant and proceed to suffer objected to it and prevented the applicant from performing his duty. In our considered view in this given situation the applicant to the best of his ability had lived up to

the higher standards in discharge of his duty and even if allegations are constituting negligence the same being non-culpable would not amount to any misconduct.

24. In so far as the allegation of making false statement which resulted in registration of criminal case against the owner of Fun and Food Village is concerned, the applicant has acted in accordance with the circular and the statement of applicant has been verified by the ACP on spot, who forwarded his report as per the circular finding the complaint as trustworthy. Subsequent accord of prosecution by the DCP under Section 195 Cr.PC on 30.9.98 is indicative of the fact that the statement of the applicant was found to be reliable, trustworthy on which the higher authorities applied their mind and ultimately case FIR was registered. Subsequent decision of the vigilance holding the allegations substantiated and resultant recommendation to cancel the FIR has been aborted by the High Court wherein the decision of the Additional Session Judge was upheld. On fresh application of mind the learned Magistrate has categorically come to the conclusion that sufficient grounds exist to proceed against the accused persons and thereafter cognizance of offence was taken and the accused have been summoned. This clearly shows that in the light of the aforesaid criminal proceedings carried before the High Court have not resulted in cancellation of FIR and as the trial is to begin and the accused have not been acquitted and the applicant has been found to have made a false complaint the allegation of making false statement is belied on the face of it and are founded on merely suspicion and surmises. Although we have not gone through the correctness or truthfulness of this

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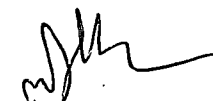
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allegation but on the face of it is contrary to law as from the proceedings it has been made apparently clear that the FIR was found to be initiated on justified grounds and moreover in the complaint filed by the owner of Fun and Food Village nothing has been alleged against the applicant and in absence of any allegation as to his connivance with the other staff aforesaid charge does not amount to any misconduct as well as contrary to law. Applicant has acted in accordance with the rules and instructions and the case has been registered as per law under the provisions of Cr.PC. In the result we do not find any material to establish that the applicant has misconducted in any manner. As such, as the allegations do not constitute any misconduct the enquiry ordered against the applicant cannot legally sustain. For the foregoing reasons the OA is allowed. The DE ordered against the applicant and consequent summary of allegations served upon him are quashed and set aside. However, we observe that we have not expressed any opinion on the merits of the departmental enquiry initiated against the other officials and have examined only the case of the applicant, ASI Kishan Chand. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."


(M.P. Singh)
Member (A)