

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2785/2001

New Delhi this the 11<sup>th</sup> day of December, 2002.

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

A.S.I.Karan Singh,  
S/o Shri Jit Ram,  
R/o Vill & P.O. Karanola,  
Delhi-110081.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. N.C.T. of Delhi through  
Chief Secretary,  
5, Sham Nath Marg, New Delhi.
2. The Commissioner of Police,  
Police Head Quarter,  
Near ITO Building,  
New Delhi.
3. Joint Commissioner of Police,  
Southern Range, Police Head Quarter,  
New Delhi.
4. The Addl. Dy. Commissioner of Police,  
West Division, Police Head Quarter,  
Near ITO Building, New Delhi. -Respondents

(By Advocate Shri George Paracken)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant, an Assistant Sub Inspector in Delhi Police impugns an order dated 18.5.98, imposing upon him a minor penalty of censure as well as order passed on appeal on 12.2.99, maintaining the punishment.

2. Applicant, who was working as ASI in Vigilance Department, West District was served upon with a show cause notice for minor penalty of censure on 27.5.97, alleging gross negligence and dereliction and carelessness in discharge of duties in so far as that while working as Head Constable he failed to prepare the dossier of case FIR No.559 dated 16.7.96 under Section 379/411 IPC at Police Station Nangloi.

3. Applicant filed his explanation contending that dossier was prepared in all respects except photograph, as the photographer was called who took the photograph but later on informed him that his reel has gone waste and the photograph of the accused is to be taken again. By that time the accused was produced in the court and was sent to judicial custody. Applicant thereafter was transferred to security wing. When applicant was re-posted he got the photograph done.

4. The statement of photographer was also annexed to substantiate his plea.

5. Disciplinary authority by an order dated 18.5.98 relying upon circular, which mandates preparation of dossiers of petty criminals finding the explanation as unsatisfactory, censured the applicant.

6. Applicant preferred an appeal against the order which was turned down by an order dated 12.2.99. A revision was filed and by an order dated 6.6.2001 it has been informed that no revision lies and applicant should approach the court, giving rise to the present OA.

7. Learned counsel for applicant Sh. Yogesh Sharma stated that orders have been issued without application of mind. His explanation has not at all been taken into consideration.

8. Shri Sharma further states that though the dossier has been prepared by him, it is not disputed affixation of photograph could not have been done due to

reasons beyond his control, as the reel was defective. Applicant got prepared the dossier and as such he has not committed any misconduct and further stated that, per se, negligence would not be a misconduct unless the loss is caused to the respondents and the negligence constitutes culpability as no culpability or ulterior motive has been alleged against applicant, he cannot be imposed the punishment and to substantiate his contention learned counsel relies upon decision of the coordinate Bench in OA-1380/2001 - ASI Karan Singh v. N.C.T. of Delhi.

9. Sh. Yogesh Sharma relies upon the following cases to further strengthen his arguments of no misconduct:

i) Vishavnath Mishra v. State of U.P., 1985 (2) SLR 708;

ii) C.M. Kannan v. Secretary, Board of Revenue (Taxes) Trivandru, 1994 (4) SLR (Kerala) 521;

iii) A.L. Kalra v. Project and Equipment Corporation Ltd., AIR 1984 SC 1361; and

iv) Union of India v. J. Ahmed, 1979 SCC (L&S) 157.

10. On the other hand, respondents' counsel Sh. George Parackal vehemently rebutted the contentions and stated that on perusal of formal inspection note of PS Nangloi for the period 1.7.96 to 31.12.96 carried out by ACP Sh. P.N. Arora it was noticed that applicant who was

Head Constable at that time failed to prepare the dossier for the case FIR No.559 which is contrary to the PHQ circular issued on 6.5.94.

11. The explanation of applicant was not found satisfactory as such the minor penalty of censure has been imposed upon him. The defence of defective film, which has delayed preparation of dossier it is stated that the same is not sustainable as the dossier has been prepared after more than one year, i.e. 30.7.97 from the date of registration of the case and as per circular ibid the same is to be prepared immediately on arrest of the accused while he is kept in police station. It is the contention of the learned counsel that if the film was destroyed he could have taken another photo after some time but having made no effort to complete the dossier he has shown carelessness and negligence of duty which amounts to misconduct and being in a disciplined force the aforesaid conduct cannot be expected from applicant.

12. I have carefully considered the rival contentions of the parties and perused the material on record. At the outset, as settled by various pronouncements of the Apex Court, on judicial review in a disciplinary proceeding this court cannot reappraise the evidence or go into correctness or truth of the charges.

13. I have also perused the impugned orders and find the explanation tendered by applicant as being taken care of and thereafter the minor penalty of censure has been imposed upon him.

14. From perusal of the appellate authority's order I find that contentions of applicant have been taken into consideration by a reasoned order.

15. In so far as contention of applicant placing reliance on various pronouncements of Apex Court as well as coordinate Bench in Karan Singh's case (supra) is concerned, I find that though it is ruled by the Apex Court in J. Ahmed's case (supra) that every negligence or lapse in performance of duties or error of judgment in evaluating the developing situation may be negligence but would not constitute misconduct unless the consequences directly attributable to negligence would entail resultant damage and the degree of culpability is high but failure to attain highest standard in discharge of duties would not constitute misconduct. In the light of what has been settled by the Apex Court, applicant, who at the relevant time when the accused was arrested on 16.7.96 as per circular dated 6.5.94 was duty bound to prepare the dossier of accused in all respects and to keep the same in police station. Before being remanded to judicial custody the accused was in police station though the photograph, as contended by applicant, has gone waste due to film being defective and the negative was destroyed, nothing prevented him to get another photograph of the accused though he was released on bail subsequently. The fact that he was transferred and when posted back he immediately made efforts and completed the dossier is not a valid defence and appears to be an after thought. Preparing of dossier after a period of more than one year, whereas it is mandated through the circular ibid to prepare it immediately, clearly smacks of carelessness on the part of

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applicant and the negligence in performance of his duties. Dossier could not be prepared on account of non-affixation of photograph. This had wide repercussion<sup>u</sup> as the accused if further involved in some offence it would be hard to identify the modus operandi in absence of any dossier prepared.

16. I am of the considered view that the allegations levelled against applicant of delay in preparation of dossier does constitute a misconduct for which penalty imposed is commensurate with the charge. I do not find any legal infirmity in the order passed by respondents. The OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)  
Member (J)

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