

Item No - 3

OA No - 2441/1999 with O.A. 2298/1999

2. 11. 2000



Present: Mrs. Meera Chhibber^{Counsel} for the applicant
Sh. Ajesh Luthra, Counsel for the Respondents

Arguments are concluded. Order reserved.

(M. P. Singh)
Member (A)

(Kuldip Singh)
Member (J)

/savi/ OA 2298/99
with
OA 2441/99 15/11/2000

Order pronounced today
w open court no ii, Both OAs are
dismissed by a common order by
a above Bench.
Original order attached

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No. 2298/1999 with O.A. No 2441/1999

New Delhi, this 10th day of the November, 2000

Hon'ble Mr. Kuldip Singh, Member(J)
Hon'ble Mr. M.P. Singh, Member(A)

O.A. 2298/1999

1. Shri Azad Singh Bhandwaj
S/o Shri Ram Kishan
R/o H.No. B-86,
Rishi Naga Shakur Basti,
Delhi.

... Applicant

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Union of India through
Lt. Governor,
Raj Niwas,
Delhi.
2. Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police,
Planning and Implementation (PHQ)
I.P. Estate,
New Delhi.
4. Dy. Commissioner of Police
IGI Airport,
Delhi.

.... Respondents

(By Advocate: Sh. Ajesh Luthra)

O.A. 2241/1999

1. Shri Azad Singh Bhandwaj
S/o Shri Ram Kishan
R/o H.No. B-86,
Rishi Naga Shakur Basti,
Delhi.

... Applicant

(By Advocate: Shri Mrs. Meera Chhibber)

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.... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

Hon'ble Mr. M.P. Singh Member (A)

The applicant has filed OA 2441/1999 under Section 19 of Administrative Tribunals Act, 1985, challenging the orders dated 13.03.1996, 31.10.1996 and 23.10.1998 passed by the respondents by which a penalty of censure has been imposed on the applicant.

1A. Similarly, the applicant has filed OA 2298/1999 challenging the orders dated 22.10.1998, 11.11.1996 and 14.03.1996 passed by the respondents by which a penalty of censure has been imposed on the applicant. Both these OAs have been filed by the ^{same} applicant on 25.10.1998. In both the OAs, the reliefs claimed by the applicant are identical and the issues to be decided are the same. Both the OAs are, therefore, disposed of by passing a common order.



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2. Brief facts of the cases as stated by the applicant are that he has initially joined Delhi Police as a Constable on 1968. In 1975 he was selected and appointed as Sub-Inspector through direct recruitment. Thereafter, he was promoted to the rank of Inspector in 1990. The applicant while on duty met with an accident on 6.3.1994 resulting in a serious head injury. He remained unconscious for three days and with great difficulty, he regained the consciousness. Due to serious head injury, his recovery was very slow and his memory was impaired. He was declared medically fit on 20.5.1994, but in the fitness certificate, it was specifically mentioned that he was fit to resume light duties. After the accident, his movements ~~he~~ had become very slow and ^{he} had become very forgetful.

3. The facts of the OA 2441 of 1999 are that he was given a show cause notice dated 14.12.1995 for an incident of 19.3.1994 on which date the applicant was admitted in RML Hospital. The applicant gave a reply to the show cause notice stating that the applicant was not on duty when this incident took place and some one else was acting as the SHO on that day. In spite of the fact mentioned above, the Deputy Commissioner of Police confirmed the show cause notice and issued the censure by observing that DD entry was filed by the I.O. without collecting the MLC and the applicant should have confirmed that MLCs pertaining to his P.S. are collected in time. He filed an appeal against this



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order but the same was rejected vide order dated 31.10.1996. Thereafter, he filed a revision petition which was also dismissed on the ground of limitations. Aggrieved by this he filed this OA seeking directions to set aside the aforesaid orders mentioned in Para I above or in the alternative remit the matter back to the respondents after quashing the order dated 23.10.1998 and condoning the delay to decide the revision petition.

3. The facts of the OA 2298 of 1999 are that the applicant was given a show cause notice on 16.1.1996 on the ground that he was found sitting on Sofa Set and was not alert. Moreover, he neither briefed his staff nor made any entry to this effect in register till 1925 hours. The applicant sent a reply stating therein that he had already checked the points and was about to make an entry ~~at~~ for which he was sitting on sofa set as he could not write while standing due to trembling of hands. The Deputy Commissioner of Police, however, confirmed the show cause notice by issuing the censure. The applicant filed an appeal which was rejected. Thereafter he filed a revision petition which was also dismissed on the ground that it was barred by limitation. Aggrieved by this the applicant has filed this OAs seeking direction to the respondents to quash and set aside the orders mentioned in para 1 or in the alternative to revert the matter back to the respondents to decide the revision petition.



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4. Respondents have contested the case and have stated that it is clear from the record that whenever the applicant did good work, his work was appreciated by granting commendation cards/certificates with cash awards as well as out of turn promotion. But in the present case, the applicant was callous and negligent in the discharge of his official duties in not collecting the MLCs of one Sh. R.B. Verma, even after a period of about 16 months. The applicant in his representation has himself admitted that he is suffering from disabilities which have impaired his performance as police officer. But in the police, physical and mental fitness are of great importance. All police duties require these attributes and it is not possible specially in the rank of Inspector to accommodate persons with below average capabilities. Instead of placing the blame on the department, the applicant should have sought the voluntary retirement from the service if his state of health did not permit him to work with required level of efficiency. Furthermore, it is a fact that due to the accident of the applicant, he was detailed for duty in domestic shift where the duties are light in nature, but the applicant was not able to perform even those duties, as such he cannot be accommodated in the police force seeing his admitted medical conditions. Although he was warned many a times by senior officers during checking/ briefings to remain alert but he miserably.



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failed to do so. In view of the aforesaid reasons the applicant is not entitled to any relief prayed by him.

5. Heard learned counsel for both the rival contesting parties and perused the record.

6. Learned counsel for the applicant submitted that before the accident, the performance of the applicant has been outstanding & his work has been appreciated by the respondents. He was given a number of commendation cards/ certificates with cash award in appreciation of the good work done by him. His name was recommended for the award of President's Police Medal for the meritorious work done by him (Annexure-6). The applicant has also been awarded commendation cards during the period 1998-1999 for doing outstanding work. He has also written a book on "First Information Report" which has been appreciated by the respondents. It was only after the accident that he was having defective memory and was not fit to undertake strenuous job. This fact was also confirmed at the time of the second medical opinion obtained by the respondents on 26.12.1996.

7. Learned counsel for the applicant further submitted that as regards the show cause notice issued to the applicant on the allegation that MLC No. 1679 of injured Sh. R.B. Verma remained pending uncollected



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from Safdarjung Hospital, the S.I., it was one Shri Ramesh Chand, the enquiry officer of the MLC who closed the enquiry and filed DD entry dated 19.3.1994 without collecting the same from the hospital. On this particular date, the applicant was admitted in RML Hospital and undergoing treatment and was not on duty on this date. Instead, somebody-else was in-charge of the Police Station and performing the duties of SHO. Therefore, show cause notice should not have been issued to the applicant as he was not responsible for not collecting the MLC from the hospital. Moreover, none of the person responsible for this lapse i.e. I.O. Ramesh Chand, I.O. & Addl. SHO was chargesheeted. Since the applicant was not keeping good health, he has made a request to the Addl. Commissioner of Police to transfer him to a post which carries light duties. In this application he has specifically mentioned that because of day and night duty routine at IGI Airport, he was finding difficult to maintain the level & quality of rest required for smooth recovery from illness. It was after effect of the head injury which took time to recover but that does not mean that his record should be spoiled and he should be punished for small and small things. This censure ultimately will come in his way of promotion. For the reasons stated above the orders passed by the respondents imposing the penalty of censure on the applicant deserves to be quashed.



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8. On the other hand, the learned counsel for the respondent submitted that as and when the applicant did good work, he was rewarded. But when his performance was not upto the mark and he was found casual & neqligent in doing his duty, disciplinary action was taken against him. In case, he was not able to perform the strenuous duties of SHO, he should have made a request for his transfer to a post carrying light duties. But he did not do so. He made a request for his transfer only on 31.5.1996, i.e. after the show cause notices were issued to him.

9. From the records placed before us we find that as and when the applicant has done meritorious and outstanding work, he has been suitably rewarded by the respondents. However, after he met with an accident, his performance has not been upto the level expected from an officer of his rank. He has been warned on a number of occasions by the superior officers for the dereliction of his duties. The respondents were well aware of his bad state of health and have taken a lenient view of the lapses committed by him. In another case, the punishment of censure was imposed on the applicant by the respondents on 23.9.1996. He filed an appeal against this impugned order and the appellate authority has set aside the punishment order with the following observation:-

"on scrutiny of the case, it is found that the I.O. of the case is more responsible for collecting the post-mortem report in time than to the SHO, the appellatant. Besides as



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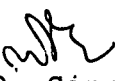
per his statement and medical documents appended with the appeal, the appellant was suffering from memory loss due to a serious accident at that point of time. Taking into consideration inability suffered by the appellant on account of memory loss and ill health, I am inclined to take a compassionate view and vacate the punishment of censure awarded by the disciplinary authority."

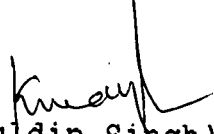
10. We also find from the records that the punishment of censure did not have much effect on the applicant to improve his performance. It is obvious from the fact that the orders of the appellate authority rejecting his both the appeals against the penalty of censure were passed in October/November, 1996. The appellant however, submitted the revision petitions in may 1998 i.e. ~~is~~ after a lapse of more than one and a half years which were rejected on the ground of limitation. On the other hand, he found time to write a book during this period. Since, the applicant was found wanting in performance of his duties assigned to him, action was taken against him by the disciplinary authority after following the due procedure prescribed in accordance with the rules and instructions. Due opportunity was given to the applicant to defend his case, by asking him to give his representation. After taking into consideration the reply and other relevant material, the disciplinary authority passed,, the orders imposing the minor penalty of censure on the applicant. It is a settled law by the Hon'ble Supreme Court that the Tribunal cannot act as an appellate authority and cannot re-appreciate the evidence. In view of this,



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there are no reasons to interfere with the orders passed by the respondents imposing the penalty of censure on the applicant. In the result both the OAs fail and are accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/ravi/