

2
Central Administrative Tribunal
Principal Bench.

23

O.A. 2725/91

New Delhi this the 10th day of February, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri R.K. Ahooja, Member(A).

Bala Dutt Pathak,
S/o Shri Shiv Dutt Pathak,
R/o D-445, West Vinod Nagar,
Delhi-92.

..Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Commissioner of Police,
Delhi Police, MSO Building,
I.P. Estate,
New Delhi-2.
2. The Dy. Commissioner of Police,
East District, Delhi Police,
DCP Office, Shalimar Park,
Delhi.
3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi.

..Respondents.

By Advocate Shri Rajinder Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who is a Sub-Inspector working with the respondents, is aggrieved by the transfer order dated 20.8.1991 transferring him from Police Station (PS) Geeta Colony to District Line and the subsequent order dated 15.11.1991 transferring him from East District to Special Cell (SB) and the order of punishment dated 13.12.1991 by which he was censured as also the appellate order dated 30.4.1991 rejecting his appeal.

8

2/2

2. The brief facts of the case are that the applicant was posted in PS Geeta Colony in May, 1990 consequent upon his transfer from District line East District. On 15.8.1991, he states that he was on emergency duty at PS Geeta Colony from 8 P.M. to 8 A.M. One Shri Harish Kumar from Faridabad (Haryana) lodged a report vide DD No.25-A with PS Geeta Colony. The complainant Shri Harish Kumar had also stated that his brother has already lodged a report regarding the same matter in Faridabad but since he had come to know that the brother of Sukh Dev, who was given certain amount of money to be deposited in the bank which had not actually been deposited resides in the area falling within the jurisdiction of PS Geeta Colony, he sought police help to locate him. According to the applicant, since the DD entry 25-A was recorded in PS Geeta Colony, the same was marked by the Duty Officer for investigation. Accordingly, he along with Constable Hari Singh and the complainant went to trace Shri Sukh Dev and had met Shri Rameshwar Singh, father of Shri Sukh Dev to whom he left a message that the latter should be sent to PS Geeta Colony in case he comes to his residence. Thereafter, the applicant states that he came back to the police station. The applicant further submits that he came to know that on the night of 17/18.8.1991, a raid was conducted by Faridabad Police at the residence of Shri Rameshwar Singh and they recovered the amount and also arrested Shri Sukh Dev and that Faridabad police was taking further action in the matter and PS Geeta Colony was no longer concerned. Thereafter, a show cause notice was issued to the applicant when Shri Rameshwar Singh made a complaint that his family had been harassed by the local police of PS Geeta Colony unnecessarily, on 24.9.1991. According to the applicant, the report lodged by Shri Rameshwar Singh was frivolous. As per the orders of the Assistant Commissioner of Police, Shri O.P. Yadav, Gandhi Nagar made enquiries into the complaint and sent a

V2

25

report on 18.8.1991 to the DCP (East) in which he has stated that the allegations of harassment to the complainant were not found to be correct as the applicant had only visited their house in the morning around 7 A.M. The applicant submits that after receiving the report, the DCP (East) passed the impugned order of transfer dated 20.8.1991 transferring the applicant from PS Geeta Colony which he states is mala fide and by way of punishment inasmuch as the applicant had not completed even a period of three months since he was posted at PS Geeta Colony which is, therefore, against the transfer policy.

has

3. The applicant /submitted a reply to the show cause notice dated 24.9.1991 to the DCP (East District). The impugned order of punishment of imposing on him /censure was passed by the Deputy Commissioner of Police (East District) by order dated 13.12.1991. The applicant has assailed this order stating that no reasons have been given and that it is not a speaking order. The appeal preferred by the applicant against the impugned order of punishment was rejected by the Additional Commissioner of Police by order dated 30.4.1992 which again the applicant alleges is a non-speaking order.

4. Shri Shyam Babu, learned counsel, has relied on the judgement of the Calcutta High Court in Santiranjan Ganguly Vs. State of West Bengal (1996 LAB. I.C.47) and submits that under the relevant regulations, the applicant should not be transferred within a period of three years whereas he has been frequently transferred. He has, therefore, submitted that the impugned transfer order should be quashed. Secondly, — he submits that relying on paragraph 25.3 of the Punjab Police Rules, he had only acted in furtherance of the DD Entry No. 25-A which had been lodged in Police Station Geeta Colony by Shri

YD

Harish Kumar when he visited the house of Shri Rameshwar Singh at Faridabad. He, therefore, submits that neither the show cause notice nor the penalty orders imposing on him/punishment of censure are legal or in accordance with the rules and that these orders may be quashed and set aside.

5. The respondents have filed a reply controverting the above allegations. They have submitted that the application is infructuous as the applicant has already been transferred and joined duties at the place of transfer. They have also stated that the transfers were made on administrative grounds and have denied that they are punitive. They have not denied the complaint lodged by Shri Harish Kumar by DD entry 25-A at PS Geeta Colony on 15.8.1991 or that the applicant who was the Emergency Officer was entrusted to inquire into the same. Regarding the inquiry/submitted by the ACP Gandhi Nagar, they have submitted that the competent authority did not agree with the same as the applicant could not proceed to search for the boy, Shri Sukh Dev, when no cause of action had arisen within the jurisdiction of PS Geeta Colony. Since the theft, if any, had taken place in Faridabad and a report had already been lodged at PS Faridabad, they have stated that the applicant could not have proceeded to search for the boy in another jurisdiction. They have further submitted that the show cause notice had been issued on account of lapses and misconduct on the part of the applicant and the penalty order of censure dated 13.12.1991 had been passed after considering his reply. In the circumstances, the learned counsel has submitted that there is no justification for interference in the matter. They have also submitted that the disciplinary and the appellate authorities' orders have been passed after taking into account the materials on record and they have, therefore, submitted that the application may be dismissed.

18/

6. The applicant has filed a rejoinder more or less reiterating the same stand as in the application.

7. The applicant had been issued a show cause notice on 24.9.1991, the relevant part of which reads as follows:

"Shri Rameshwar Singh R/o 754, Jheel, Krishna Ngr. complained that his family is being harassed by the local police of PS Geeta Colony unnecessarily. On enquiries it is found that there was no business on the part of ASI Bala Dutt Pathak No. 2598/D to proceed to search the boy, when no cause of action ever arose in the jurisdiction of PS Geeta Colony. The theft, if any, had taken place in Faridabad and a report had already been lodged by the party there and no request has been made by Faridabad police for our help. This is unnecessary rather illegal interference with the citizen's private life. This act on the part of ASI Bala Dutt Pathak amounts to grave misconduct and dereliction in the discharge of his official duties".

The reply to the show cause notice had been submitted by the applicant on 10.10.1991 on which the disciplinary authority confirmed the notice of censure on the applicant by order dated 13.12.1991. Shri Shyam Babu, learned counsel for the applicant had argued that under Para 25.3 of the Punjab Police Rules which have been extended to the Delhi Police, he could take all possible lawful measures to secure the arrest of the offender and the detection of the offence when a DD entry had been made in PS Geeta Colony where he was posted at that time. Para 25.3 of the Punjab Police Rules reads as follows:

"25.3. Action when offence occurring in another police station is reported.- When the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact shall be recorded, in the daily diary and information shall be sent to the officer in charge of the police station in the jurisdiction of which the offence was committed. Meanwhile, all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence".

192

8. In this case, the applicant has himself admitted that on receiving the complaint he went to trace the house of the brother of Shri Sukh Dev and had also met his father Shri Rameshwar Singh to whom he had told that in case Shri Sukh Dev comes, he should be sent to PS Geeta Colony. He has also stated that the brother of the complainant, Shri Harish Kumar, had already lodged a complaint about the loss of the money in Faridabad. Para 25.3 of the Punjab Police Rules relied upon by the applicant provides that when the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact is to be recorded in daily diary and the information to be sent to the officer in charge of the police station in the jurisdiction of which the offence was committed. Meanwhile, the applicant could take all possible lawful measures to secure the arrest of the offender and the detection of the offence. In this case, the applicant has not stated that he had taken necessary action to inform the officer in charge of Faridabad Police Station regarding the lodging of the DD entry No. 25-A but had straightaway proceeded to inquire into the matter and visit the house of Shri Rameshwar Singh. These actions cannot be stated to be in accordance with the rules as evident from the facts of the case. The show cause notice narrates all the facts, including informing the applicant to give a reply as to why his conduct should not be censured. The disciplinary authority has come to the conclusion that the reply submitted by the applicant was not satisfactory and convincing and we do not find any infirmity in that order.

9. As regards the order passed by the appellate authority, it is seen that the applicant had been given a personal hearing. The appellate authority has clearly stated that there was no concern on the part of the appellant to proceed in search of the boy when no cause of action arose in the area of PS Geeta Colony. Actually, he should have asked Shri Harish Kumar, who lodged the DD entry at the police station to take the help of Haryana Police. In the

19

29

circumstances, the appellate authority confirmed the order of censure passed by the disciplinary authority and dismissed the appeal. We find that there are sufficient reasons given in the impugned penalty orders and the submission of the applicant that these are non speaking orders is, therefore, rejected.

10. The applicant has himself stated in the rejoinder that generally the tenure of posting of an officer in any unit shall be three years, but that does not mean that the transfers cannot be effected within a period of three years. The applicant has not been able to establish any mala fides to set aside the impugned transfer orders, besides is also relevant the fact that he has already joined the place of transfer. We, therefore, see no good grounds to interfere in the matter.

11. In the result, this application fails and is dismissed.
No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'