

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1361/2004

New Delhi the 19th day of January, 2005

Hon'ble Mrs.Meera Chhibber, Member (J)

HC Radha Krishan,
S/O Shri Lekh Ram,
No.12/ND Posted at IInd Bn.
1081/DAP Kingsway Camp, New Delhi

..Applicant

(By Advocate Shri R.K.Shukla)

VERSUS

1. Union of India through
Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.
2. The Joint Commissioner of Police,
New Delhi Range, Delhi.
3. The Deputy Commissioner of Police,
New Delhi District, New Delhi.

.. Respondents

(By Advocate Shri S.Q. Kazim)

ORDER (ORAL)

By this OA, the applicant has challenged the orders dated 26.2.2004 and 30.7.2003 (Annexures A-1 and A 2 respectively).

2. The brief facts submitted by the applicant are that he (Head Constable in Delhi Police) was posted in the Prosecution Branch, Patiala House when he was served a show cause notice on 1.7.2003 (page 15) along with three other persons on the ground that all the four subordinates of Prosecution Branch, New Delhi District were deputed for patrolling duty in the evening from 5PM to 11 P.M on 21.6.2003 vide Notification dated 18.6.2003 but they neither turned up nor sent any information regarding their absence. They were, therefore, marked absent on 21.6.2003, which act on the part of said persons



amounts to gross negligence, carelessness, dereliction of duty and lackadaisical attitude towards their responsibilities.

3. The applicant gave his reply on 17.7.2003 (page 16) stating therein that the Courts were closed for summer vacations from 16.6.2003 to 25.6.2003 and the staff of the Prosecution Branch at Patiala House Courts where the delinquent was posted was ordered to report for duty in shifts, as per the orders of Chief Prosecutor, Patiala House, Courts, New Delhi vide his order dated 11.6.2003. According to the said order, the applicant had to attend the office on 20 and 21.6.2003. He attended to his duties at Prosecution Branch, Patiala House Court on 20 and 21.6.2003 but the order was neither got served upon him nor the same was brought into his knowledge and had he been informed about the said order he would not have violated the order at any cost and would have reported for patrolling duty as ordered on 20/21.6.2003. He further submitted that he has always performed his duties sincerely and obediently and had never been absent in 23 years of stigma free service. The disciplinary authority, however, confirmed the show cause notice and censured him conduct vide order dated 30.7.2003 (page 14). Being aggrieved, he filed an appeal to the Joint Commissioner of Police (page 18) but the appellate authority rejected his appeal observing that the order for evening patrolling was sent to Prosecution Branch on 18.6.2003 and in compliance thereof one Const. Satyavarat No. 617/ND, posted in Prosecution Branch had reported for duty. It was, therefore, the responsibility of the appellant to enquire about his duty either from Chief Prosecutor or D.O./District Lines/NDD.

4. These two orders have been challenged by the applicant in the present OA on the ground that as far other two persons, namely, Constable Shaju and Constable Mansa Ram are concerned, in their cases even though they were censured by the Disciplinary Authority but on appeal the same Joint Commissioner of Police allowed their appeal after taking clarifications from the DCP, New Delhi District who confirmed that the



appellant had performed patrolling duty on all other occasions when detailed except in the instant case. The contention of the appellant that the punishment was meted out without giving any cogent reasons also appears to be correct.

5. It is submitted by the applicant that the same clarification ought to have been sought in the case of the applicant as well and since all the four persons were similarly situated different yardstick could not have been adopted by the appellate authority to dismiss one appeal while allowing the other appeals. Moreover, he submitted that the reasoning given by the appellate authority in case of appellant would be applicable to others as well. Therefore, he cannot be discriminated against. In order to substantiate his contention that he was not even informed about the order whereby he was detailed for patrolling duty, he referred to page No.23 i.e., the order whereby patrolling duty was given to different persons vide order dated 18.6.2003 and there is a note to the following effect.

"Since the Courts are closed and officials posted in Prosecution branch mentioned above cannot be contacted to serve their duties noted down, returned in original".

He further submitted that since he was not aware about the Patrolling duty, the punishment awarded to him is liable to be quashed and set aside.

6. Respondents have opposed this OA and have submitted that since the reply submitted by the applicant was not found satisfactory, notice of Censure was confirmed and his appeal was also rejected by the appellate authority by a speaking order and therefore it does not call for any interference. It is submitted by the respondents that it was the over all responsibility of the applicant to enquire from Chief Prosecutor or from District Line about his duty. Therefore, he should have reported to District Line and obtained his duty chart. When Constable Satyavrat, who was also posted in Prosecution Branch had reported for duty, there is no justification why the applicant would not



informed about it. They have thus submitted that the OA is devoid of merits. The same be dismissed.

7. I have heard both the counsel and perused the pleadings as well. Admittedly, show cause notice was given to all the four applicants on 1.7.2003 who were posted in Prosecution branch, New Delhi District, namely, Head Constable Radha Krishan No. 12/ND, Ct. Mansa Ram No. 944/ND, Ct. Naresh No. 305/ND and Ct. Shaju No. 1011/ND. All the four applicants have taken the same ground but the disciplinary authority had confirmed show cause notice and censured their conduct. All the four applicants had filed a detailed appeal wherein the same stand was taken by all of them that they were not served with the notice dated 18.6.2003 which is evident from the note given by the Sr. Prosecutor on the order dated 18.6.2003 itself on 19.6.2003 which clearly shows that the order was not conveyed to the appellant yet the appellate authority allowed the appeal of Constable Shaju and Constable Mansa Ram by stating therein that clarifications were sought from the DCP, New Delhi District who had confirmed that the appellant had performed patrolling duty on all other occasions when detailed except in the instant case and the contention of the appellant that the punishment was meted out without giving any cogent reasons also appeared to be correct. However, in the case of the applicant, the same appellate authority took a different view and rejected his appeal on the ground that order for evening patrolling duty was sent to Prosecution Branch on 18.6.2003 and one Constable Satyavarat who was also posted in Prosecution Branch had reported for duty. Therefore, it was the responsibility of the appellant to enquire about his duty either from Chief Prosecutor or from D.O./District Lines/NDD.

8. From the perusal of this order, it is clear that no such clarification was sought from the DCP New Delhi District in case of applicant with regard to his past service whereas in the case of two others, appeals were allowed on the basis of clarification sought from DCP, New Delhi District. I do not see any justification why the same




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clarification should not sought in the case of applicant as well. Moreover, the reasoning given by the Joint Commissioner of Police in case of applicant that one Constable Satyavarat reported for duty would be equally applicable in the case of Constable Shaju and Constabl Mansa Ram as well. But no such reasoning was given in their appeal. Since applicant and Constable Mansa Ram and Constable Shaju were all similarly situated, I see no justification why different orders should have been passed in case of applicant. It clearly amounts to discrimination because different yardsticks have been adopted for deciding the appeals of three similarly situated persons.

9. In view of the above discussion, order dated 26.2.2004 passed by the appellate authority cannot be sustained in law. The same is accordingly quashed and set aside. The matter is remitted back to the Joint Commissioner of Police to call the same clarification from DCP New Delhi District in case of applicant also, as was called in the case of two other persons and then pass the order keeping in view the orders passed by him in the cases of Constable Shaju and Constable Mansa Ram within a period of two months from the date of receipt of a copy of this order, under intimation to applicant.

10. With the above directions, this OA is disposed of. No order as to costs.


(Mrs. Meera Chhibber)
Member (J)

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