

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 429/2013

Reserved on: 11.01.2017
Pronounced on: 17.01.2017

Hon'ble Mr. P.K. Basu, Member (A)

Udaivir Singh, D-2812
Age- 49 years
S/o Late Shri Chandan Singh
R/o 341, Village Tughlakabad,
New Delhi-44

...Applicant

(Through Shri Sachin Chauhan, Advocate)

Vs.

1. Govt. of NCTD through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi

2. The Joint Commissioner of Police
South-Eastern Range through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi

3. The Dy. Commissioner of Police
North-East District through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi

...Respondents

(Through Ms. Rashmi Chopra, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant who is an Inspector with Delhi Police and was posted as Station House Officer (SHO) in Jafrabad was issued a Show Cause Notice (SCN) as follows:-

"An explanation of Inspr. Udaivir Singh, No.D/2812 was called vide this office No.9088-90/HAP/NE dated 29.10.2010 for his grave misconduct, negligence, carelessness and dereliction in the discharge of his official duties in that the Hon'ble Court of Ms. Anuradha Shukla Bhardwaj, Principal Magistrate, Juvenile Justice Board-I Sewa Kutir Complex, Kingsway Camp, Delhi-110009 has passed order in case FIR No.176/2010 u/s 363/323/342/34 IPC P.S. Zafrabad that juvenile Ali Hasan was apprehended by the officials of Jafrabad police station after he surrendered at the police station concerned. He was sent to central jail Tihar initially. An application was filed by the Ld. Legal Aid Counsel Mr. Jacob Zeliang bringing it to the knowledge of the Board that Ali Hasan was still a juvenile and sending him to the Central Jail was illegal. It is true that Inspr. Udaivir Singh, No. D 2812, SHO/ Zafrabad could not use his memory to find out the correct age of Ali Hasan at the time of arresting him in this case. It clearly shows that Inspr. Udaivir Singh, No.D/2812, SHO/ Zafrabad found highly irresponsible, negligent, careless and failed to perform his official duties assigned to him, which is a serious lapse on his part.

The U.O. for explanation was sent to ACP/ Seelam Pur to service the same to Inspr. Udaivir Singh, No.D/2812, but he did not bother to acknowledge/ submit his written reply. He was called in orderly room and heard on 29.12.2010. He stated he was not aware of his previous record as juvenile. As per his own admission, his age was recorded as 20 years. But as per certificate he was found to be 17 years plus. Therefore, the statement cannot be accepted at par value in case of confusion, it is essential on the part of IO & SHO to confirm his/ her age.

The above act on the part of Inspr. Udaivir Singh, No.D/2812, SHO/ Zafrabad amounts to grave

misconduct, negligence and carelessness in discharge of official duties.

He is, therefore, called upon to show cause as to why his conduct should not be censured for this lapse. His reply, if any should reach this office within 15 days from the date of receipt of this notice failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex-parte on merit."

2. He replied to the SCN and was also heard in orderly room on 9.03.2011. The Disciplinary Authority (DA) held that the fact that the accused Shri Ali Hasan was a juvenile was within the knowledge of the SHO because he, in a case in January, 2010, before the Juvenile Justice Board had filed an affidavit that Ali Hasan (the delinquent), was a juvenile. The DA also relied on Standing Order (SO) no.68, which pertains to the duties of the Police under the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act, 2000) and Juvenile Justice (Care & Protection of Children) Rule-2007, specifically to rule 8 which states as follows in case of doubt whether the accused is indeed juvenile or not:

"8. In case the age of the child in conflict with law is not known or not clear, efforts should be made to ascertain the age of the child before proceeding legally. In case of doubt, the benefit of doubt shall be in favour of the child in conflict with law for treating him/ her as a juvenile. In order to collect the age proof of juvenile in conflict with law efforts should be made to collect his school certificate, municipal certificate, etc. In case of non availability of any document, age should be confirmed by Medical Board constituted at Govt. Hospital and not by ossification report. In every case the age of the juvenile shall be determined within a period of 30 days from the date of making of the application before the Committee and the age determination

inquiry shall be conducted by the Court of the Board by seeking evidence by obtaining:

- (a) (i) The matriculation or equivalent certificates, if available.
- (ii) The date of birth certificate from school (other than a play/open school).
- (iii) The birth certificate given by a corporation or a municipal authority or a panchayat.
- (b) In the absence of (a), the age of child shall be determined by a duly constituted medical board at a Govt. Hospital.
- (c) In cases, after determining the age accused is found to be an adult, immediately an FIR is to be registered and investigation is to be taken up."

Further it was noted by the DA that the IO was a trainee officer and, therefore, it was the duty of the applicant as the supervisory officer and being the Chief Investigating Officer, to guide the IO and supervise his investigation properly. The DA, therefore, passed punishment order of 'Censure' vide order dated 11.03.2011.

3. The applicant filed his appeal on 23.04.2011 in which the primary defence taken by him were as follows:-

- (i) That on 5.08.2010 and 7.08.2010, the defence counsel for Ali Hasan moved bail application before the Trial Court and in none of these, it was mentioned that Shri Ali Hasan was a juvenile;
- (ii) When the IO requested for one day police remand the defence counsel of Ali Hasan did not point out that he was a juvenile. During his medical

examination on 10.08.2010 and 11.08.2010 before the two doctors, Ali Hasan stated his age to be 20 years;

(iii) At the time of judicial remand, Ali Hasan stuck to his claim of being 20 years of age;

(iv) The major part of the lapse was on the part of IO SI Vinod Kumar, who was let off with a written warning whereas the applicant has been awarded the punishment of 'Censure'.

The appellate order dated 23.10.2012 upheld the order of the DA after considering the appeal as well as hearing the applicant in the orderly room.

4. The departmental proceedings started after the learned Principal Magistrate noted that the SHO i.e. the applicant had filed a report on 18.01.2010 earlier to this case wherein he had himself stated that Ali Hasan was a juvenile and the learned Magistrate found it strange that within 8 months, the applicant allowed his subordinate to record the age of Ali Hasan as 20 years and sent him to jail on the plea that the child himself had told his age to be 20 years. The learned Principal Magistrate further referred to SO 68 and also the provisions of the JJ Act and Rules and took a very adverse view of the conduct of the applicant and directed inquiry into the matter.

5. The arguments of the learned counsel for the applicant are as follows:

- (i) Discrimination, as the IO Vinod Kumar was let off with a warning, who was primarily responsible for recording the age of the juvenile and though he was the supervisory authority, he was awarded much harsher punishment of `censure`;
- (ii) The SCN refers to loss of memory on the part of the applicant, which cannot be construed as a misconduct. In this regard, he relies on the order of this Tribunal in OA 4249/2012, **Inspr. Jagjit Singh Vs. Govt. of NCTD and others** and specifically to para 4 of the order in which the Tribunal has made a distinction between misconduct and not making sincere efforts. The relevant portion of the order is quoted below:

“There is difference between efforts/sincere efforts and negligence/carelessness/dereliction in discharge of official duty. The literal meaning of the term sincere, as mentioned in the Oxford concise dictionary is; proceeding from or characterized by genuine feelings. Thus, the lack of sincerity is something which expresses the state of mind. The absence of genuine feelings of Government servant while discharging function may not be styled as misconduct so long as he is performing the function. In the present case, it is not alleged that the applicant did not make efforts. Allegation against him is that the efforts were not sincere meaning thereby that while making the efforts, he did not have the genuine feelings. So long as a Government servant discharges his function and take due steps in this regard, the absence of the expected state of his mind i.e. genuine feelings in making efforts for discharging the work may be a cause to shift him from that work or to withdraw the work from him but cannot be termed as misconduct inviting imposition of

penalty. Probably, the disciplinary authority was conscious of such proposition and while issuing the show cause notice used the expression negligence/ carelessness and dereliction in the discharge of duty and did not say that since the applicant did not make sincere effort, he committed misconduct.”

- (iii) OA 430/2013, **Udaivir Singh Vs. Govt. of NCTD and others** – This matter was remanded as the appellate authority had not considered the pleas the applicant had raised in the appeal.
- (iv) Since before the police and all other forums, Ali Hasan had stated that his age was 20 years, there was no occasion for the applicant to suspect that he was a juvenile as it is very difficult to distinguish between a person of 17 years (as the applicant) and of 20 years, just by looking at them;
- (v) The order of the appellate authority is non-speaking as it did not consider any of the issues raised by the applicant in his appeal. Moreover, it is stated that in his report dated 18.10.2010 by the ACP, Seelampur before the learned Principal Magistrate, Juvenile Justice Board, the respondents themselves have mentioned all the issues that have been raised by the applicant in his appeal. In fact, in para 11, it has been mentioned as follows:

“11. But the maintenance of the records about the juveniles in Police Stations is

now allowed. So no record about juveniles is being maintained in Police Stations and there is no record about Ali Hasan in the Police Station.

12. It is true that the SHO could not use his memory to find out the correct age of Ali Hasan at the time of arresting him in this case."

It is stated that this also proves that the respondents were also of the opinion that the only fault that could be attributed to the applicant was that he could not use his memory to find out correct age of Ali Hasan at the time of arresting him.

6. Learned counsel for the respondents stated that in January 2010, the applicant himself had filed an affidavit before the Court that Ali Hasan was a minor. Therefore, being aware of the fact that Ali Hasan was a minor, he should have corrected his subordinate namely IO and treated Ali Hasan as a juvenile. It is not correct for the applicant to state that this fact of Ali Hasan being a juvenile was not brought before the Hon'ble District and Sessions Judge while applying for bail as para 3 of the application, which has been filed by the applicant himself, states as follows:

- "3. That the applicant is minor as his date of birth is 2.01.1993 as per his birth certificate."

7. The appellate authority considered the appeal and found no fresh ground for altering the order of the DA. It is stated that the applicant's case is not on the same footing as that of IO Shri Vinod Kumar as the IO was on training and the applicant

who was SHO, had spent considerable time in the police force and, therefore, he should have been aware of SO 68 as well as various provisions of the JJ Act and Rules. Thus, the proceedings against the two of them cannot be equated as being a supervisory officer, noting the fact that the IO was on training, the applicant should have been more cautious in verifying the facts. In fact, the applicant himself had earlier filed an affidavit in the Court that Ali Hasan was a juvenile.

8. It was further argued that in case the appellate authority agrees with the findings of the DA, it is not mandatory for him to mention each and every issue that has already been considered by the DA.

9. It is further brought to my notice that in his own appeal, in para 8, the applicant has stated as follows:

"8. As from his physical appearance Ali Hassan seemed to be a border line case, so during their PC remand the IO had asked Ali Hassan about the proof of his age. But, straight away he refused and said that what ever he has told is correct, but did not provide any proof of his age. I myself also asked him about his age but in spite of repeated directions, he hardly took any interest for procuring the proof and persistently told his age as 20 years."

Based on above, the respondents counsel stated that the applicant was well aware from the physical appearance of Ali Hasan that he seemed to be a border line case and, therefore, he should have been more cautious in order to ascertain the correct age of the accused.

10. I have heard the learned counsel for the parties, gone through the pleadings available on record and perused the orders cited.

11. The facts of the case are not disputed namely that Ali Hasan is a juvenile. This was in the knowledge of the applicant who had himself filed an affidavit 8 months back, stating that the applicant was a juvenile. However, in this case, he was not careful and vigilant enough on the investigation done by a trainee IO. The issues raised by the applicant in his appeal are mostly that are mentioned in the ACP's report dated 18.10.2010 and well within the knowledge of the DA and the Appellate Authority. The DA has given specific reasons why he considered the applicant guilty and then passed the punishment order of 'censure'. In this regard, it is also interesting to note the observations of the learned Principal Magistrate which are quoted below:

"The report of Mr. Anant Asthana further says that the adults in the area are patronizing the children of the locality in doing "zebkatri". If legal aid counsels are aware of this, the police must also be aware of this fact. One of the persons has been named in this case itself and it is said that this person is a police informer.

If this were correct the police in fact is itself guilty of patronizing the crime and of permitting the exploitation of the juveniles at the hands of the adults.

It was observed by this Board in one of its previous orders that the preventive and proactive approach of the police in dealing with the issues relating to the children more specifically the reasons and the causes of their getting into delinquency and the protection

of the children from exploitation at the hands of adults, is the need of the time.”

The Court also took note of the following provisions under sub rules 5 and 6 of Rule 86, which are quoted below:

“RULE 86 (5) Special Juvenile Police Unit at district level shall co-ordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.

(6) The unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the law and for this purpose the district level units shall maintain liaison with other units of police station.”

12. It becomes clear that it was the duty of the applicant to protect the juvenile from being used by the crime syndicates. Since the applicant himself stated that Ali Hasan seemed to be a border line case, not determining his correct age would amount to gross misconduct and violation of the provisions of JJ Act, which puts a statutory liability on him to protect the juvenile. By not declaring Ali Hasan as a juvenile, the applicant indirectly played in the hands of the crime syndicates.

13. Viewed in its totality, therefore, I am of the clear opinion that there is no case for the Tribunal to interfere in this matter. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

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