

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-491/2014
With
OA-486/2014**

**Reserved On: 31.01.2017
Pronounced On: 07.02.2017**

Hon'ble Mr. Shekhar Agarwal, Member (A)

OA-491/2014 & OA-486/2014

Sh. Atul Sood (Insp. ATO)
No. D/3013, PIS No. 16900058,
Delhi Police Posted at
P.S. Sarojni Nagar,
S/o Sh. Sansar Chand Sood,
R/o 251-E, MIG Flats,
Rajouri Garden,
New Delhi-110027.

..... Applicant in both the OAs

(through Sh. S.C. Sagar, Advocate)

Versus

1. Delhi Police through
Commissioner of Police,
Police Headquarter,
I.P. Estate, New Delhi.
2. Govt. of NCT of Delhi through
Chief Secretary,
Players Building,
I.P. Estate, New Delhi.

..... Respondents in both the OAs

(through Sh. Amit Anand and Sh. Vijay Pandita, Advocates)

ORDER (ORAL)

These two OAs are interconnected and therefore are being disposed of by a common order.

2. Facts of OA No. 486/2014 are that the applicant was posted as Inspector (Investigation) in Police Station, Sarojini Nagar on 18.08.2011. On 11.01.2012, an FIR No. 11/2012 under Section 380/454 IPC was registered at the instance of one Smt. Ruchira

Pant, who was Director of Export Promotion Council, Government of India and was also wife of Additional DGP, Uttaranchal. The applicant was entrusted with the investigation of the aforesaid case. During the pendency of the investigation, on 21.06.2012, the applicant was posted as SHO of the same police station. On 25.08.2012, the respondents served show cause notice on the applicant asking him to show cause as to why he should not be censured for transferring the investigation of the aforesaid case to Sub-inspector Babu Lal without the approval of competent authority/senior officer. The applicant submitted his reply on 27.08.2012. On 17.03.2013, the disciplinary authority passed the impugned order awarding punishment of censure. An appeal filed by the applicant against the aforesaid order on 27.04.2013 was dismissed by the appellate authority on 07.01.2014. Hence, he has filed this OA seeking the quashing of the orders passed by the Disciplinary Authority (DA)/ Appellate Authority(AA) as well as show cause notice dated 24.09.2012.

3. Facts of OA No. 491/2014 are that in regard to the same FIR No. 11/12, the applicant was served a show cause notice on 25.08.2012 as to why his conduct should not be censured for unprofessional investigation of the aforesaid case. He submitted his reply on 10.09.2012. However, disciplinary authority imposed a punishment of censure vide order dated 25.09.2012. An appeal filed against the aforesaid order on 22.10.2012 was dismissed by the appellate authority on 18.04.2013. Hence, the OA has been filed seeking quashing of the orders passed by the DA/AA as wells the show cause notice.

4. The more or less identical grounds taken by the applicant in both the cases are that orders passed by the disciplinary authority and appellate authority were illegal, unwarranted, arbitrary and bad in law. They have been passed without considering his defence and are result of prejudice and vindictiveness on the part of the authorities. The complainant, Smt. Ruchira Pant was wife of Additional DGP, Uttaranchal and was putting undue pressure on the investigating agency through senior officers. Consequently, just to satisfy her ego, the applicant has been punished. The respondents have completely ignored the fact that the investigation in this case was entrusted to the applicant when he was Inspector (Investigation) in the same police

station. Later on he was posted as SHO and got busy in other administrative and law and order work. Consequently, using his powers under Section 157 of CrPC, he had entrusted the investigation of this case to sub-inspector Babu Lal. For this he was fully empowered under law. However, the respondents have punished him on the basis of suspicion without any evidence or proof contrary to the law laid down by the Apex court in the case of **Union of India Vs. H.C. Goel, AIR 1964 SC 364**. In case of **Colour Chemical Ltd. Vs. A.L. Alaspurkar and Ors., 1998(1) AD (SC) 741**, the Apex court has held that employers can victimise their employee in different ways for extraneous consideration and the applicant is a fine example of the same. Further he has submitted that he has been punished for the same lapse twice inasmuch as two censure entries have been awarded to him for the same lapse. Not only there has been violation of doctrine of estoppel but the applicant has been inflicted double jeopardy. This according to the applicant was bad in law as held in the case of **UOI Vs. P. Sasi, 2012 (195) DLT 425 DB HC**. The applicant has submitted that he had an excellent record of service and had not been meted out any punishment before this.

5. In their reply, the respondents have submitted that complaint received from Smt. Ruchira Pant was entrusted to the applicant who was then posted as Inspector (Investigation). However, later on when the applicant was posted as SHO of the same police station, despite directions from senior officers, he transferred the investigation of the said case to sub-inspector Babu Lal without the approval of the competent authority or/ senior officer. Consequently, he was issued a show cause notice to explain his conduct which displayed negligence and non professional attitude. The applicant submitted his reply which was found to be unsatisfactory by the DA as this was a case of obvious defiance of orders. Hence, censure was awarded to him. An appeal filed by the applicant before Joint Commissioner of Police was also dismissed.

6. In their reply filed in OA No. 491/2014, the respondents have submitted that investigation of case FIR No. 11/12 under section 380/454 IPC was entrusted to the applicant by the then DCP, SD with a direction that this was an important case and should be investigated by the applicant personally. However, the applicant failed to

get the IMEI number of the stolen mobile phone and furnished wrong information to senior officers that the IMEI number had been kept under surveillance. Apart from this, photographs of the scene of crime were also not placed on the case file. The applicant told the senior officers that photographs have not been taken, even though the fact was that the crime team had visited the spot and had actually taken photographs. This was not mentioned in the CDs of the case file as well. It was also found that case diary was written by the SI instead of being written by the applicant himself. Thus the applicant had been lying on each issue and had broken the basic trust which the officers senior to him had reposed in him. The applicant had not bothered to obtain the IMEI number of the stolen phone. Instead of that, he only put the two old sim cards under surveillance, one of which was Indian and the other was German. The applicant on the other hand informed the senior officers that IMEI number of the stolen phone had been put on surveillance. Since the sim cards were not used, putting them on surveillance was of no help and the stolen phone could not be traced. Consequently, the applicant was censured.

7. We have heard both sides and have perused the material on record. One of the grounds taken by the applicant is that he has been punished twice for the same lapse. I do not find any merit in this contention. This is because one censure entry to him has been awarded for disobeying the orders of the seniors and transferring the investigation of the case entrusted to him by them to a subordinate officer. The other censure entry pertains to carelessness displayed by him in investigation. Thus, the two lapses are different and hence the respondents have rightly treated them as separate acts of misconduct and awarded separate censure entries. Thus, the applicant's contention that he has suffered double jeopardy or that the respondents were barred by doctrine of estoppel lacks merit.

8. Next, applicant has contended that he had been punished only to satisfy the ego of complainant who was wife of senior officer. While it may be true that the complainant was a wife of a senior officer and the respondents may have been attaching undue importance to her case, even then, the lapse of the applicant cannot

be overlooked. The respondents have pointed out the carelessness displayed by the applicant in investigation of this case by not obtaining and putting IMEI number of the stolen phone on surveillance and instead confining himself by putting only sim card under surveillance. It is common knowledge that IMEI number is phone specific whereas the sim card can always be changed while using a stolen phone and therefore putting sim card under surveillance would not have served any purpose. Moreover, the applicant also mislead the seniors regarding the photographs of the crime scene. As far as transfer of case to SI Babu Lal is concerned, the applicant is right in saying that he was empowered under Section 157 of CrPC to do so. However since investigation of this case had been specifically entrusted to him by senior officers, it was his duty to obtain their concurrence for so transferring the case to another investigating officer. By not doing so, the applicant has not acted in a manner expected from an officer of a disciplined force. Thus, we do not find any merit in contention of the applicant. None of the judgments relied upon by him can be of any help as I do not see any vindictiveness in the action of the respondents against the applicant.

9. I, therefore, dismiss both the OAs since they are devoid of merit. No costs.

Shekhar Agarwal
(Member A)

/ns/