

**Central Administrative Tribunal
Principal Bench**

OA No.841/2011

Order reserved on: 16.07.2016.

Pronounced on: 21.07.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)

Hon'ble Mr. K.N. Shrivastava, Member (A)

Shyam Sunder Kaushik,
PIS No.16770081
Inspector in Delhi Police,
S/o Sh. H.C. Sharma,
R/o 19/117, Shivam Khand,
Vasundhera, Ghaziabad, UP.

-Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Commissioner of Police
PHQ, IP Estate,
New Delhi.
2. Addl. C.P. Security (PM)
Through Commissioner of Police,
PHQ, IP Estate,
New Delhi.

.... Respondents

(By Advocate: By Mrs. Harvinder Oberoi)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs sought in the OA read as under:-

- "1. To quash and set aside the impugned orders as mentioned in Para 1 of O.A. and direct the respondents to restore to the applicant his original increment with all consequential*

benefits including promotions/seniority and arrears of pay.

2. *Award cost of the proceedings in favour of the applicant and*
3. *pass such other and further orders as deemed fit and proper in the circumstances of the case to meet the ends of justice.”*

2. The brief facts of the case are as under :-

2.1 The applicant was posted as SHO/Dilshad Garden Police Station, Delhi when a complaint dated 21.08.2006 from one Sh. Anil Sarin, a real estate developer was received in the police station on 25.08.2006. The complainant had alleged that one Sh. Sanjay and one Sh. Pradeep (Constable in Delhi Police) had come to his house on 19.08.2006 , threatened him and took away a signed blank cheque. The complainant had stated that the two accused persons were known to him and that they had come to his house on 19.08.2006 to enquire whether the complainant was interested in selling some flats. On receipt, the complainant was initially marked to Hd. Constable Sardar Singh of the police station. When a complaint regarding harassment by Hd. Const. Sardar Singh was received, the applicant marked the said complainant to the Additional SHO Shri Satyajeet Sarin for further enquiry who lodged DD entry through telephone in the office of accused

Const. Pradeep at Teen Murti Traffic Lane requiring him to appear before him on 04.10.2006.

2.1. An FIR No.321/06 under Section 380/34 IPC was registered at the Dilshad Garden Police Station on 04.10.2006 on the instructions of the Additional SHO, Shri Satyajeet Sarin and investigation was entrusted to ASI Rishi Pal Singh. Both accused persons were arrested on the same day by the Investigating Officer (IO). The accused persons, through their lawyer, approached the court of Dr. Sahabuddin, Metropolitan Magistrate, Kakkardooma court, Delhi on 6.10.2006 seeking their release on bail on the same day. The IO also filed a report before the Metropolitan Magistrate stating that no concrete proof could be found against the accused persons, nor the complainant could produce any proof against them despite several reminders, and hence the accused persons could be discharged from the case. Prior to it, at the behest of the police, accused Sh. Sanjay was remanded to judicial custody upto 19.10.2006 and the other accused Const. Sh. Pradeep to the police custody for a day i.e. 05.10.2006 by the court. The Metropolitan Magistrate ordered release of the accused persons on bail on 6.10.2006 on a personal bond of Rs.8000/- and with surety of the like amount.

2.2. On the basis of information received that some foul-play had taken place in the matter, at the level of senior officers, it was decided to hold a preliminary enquiry to ascertain the facts. The preliminary enquiry concluded by stating that the role of Inspector Satyajit Sarin, Addl.SHO, and Rishi Pal Singh ASI appear to be dubious and recommended for the conduct of a thorough enquiry into the matter. Based on the preliminary enquiry report, the Disciplinary Authority (DA) namely, Addl. Commissioner of Police, decided to order a disciplinary enquiry against SHO Shyam Sunder Kaushik (applicant herein), Addl. SHO Satyajit Sarin and ASI Rishi Pal Singh. Shri M.R. Gothwal, Deputy Commissioner of Police DE cell was appointed as Enquiry Officer (EO). The E.O. conducted a thorough enquiry examining catena of witnesses from both sides and submitted a detailed report. The conclusion of the said report, so far as it pertains to the applicant, reads as under:-

“Conclusion:

The charge against Insp. Shyam Sunder Kaushik No.D-1/699 is not substantiated in view of the foregoing discussion.”

2.3 The Disciplinary Authority (DA) did not agree with the findings of the Enquiry Officer (EO) and issued a detailed

Annexure A-2 disagreement note, the relevant portion of which is extracted below:

"From the statement of above witnesses, it is evident that there was tacit consent of Inspr. Shyam Sunder Kaushik the then SHO Dilshad Garden for the entire episode which shows failure of supervision and incompetence on his part.

In view of above version of the witnesses, I tentatively disagree with the finding of the E.O. and Inspr. Shyam Sunder Kaushik, No.D-I/699 is called upon to submit his representation within 15 days from the date of receipt of the disagreement note failing which it will be presumed that he has nothing to say in his defence and the matter will be decided on merit. A copy of the finding of the E.O. is also enclosed."

2.4 The applicant submitted his reply to the disagreement note vide his letter at Annexure A-8. The DA, after considering the representation of the applicant against the disagreement note and taking into consideration the material available on record, passed the Annexure A-3 impugned order imposing the penalty of withholding of one increment temporarily for a period of two years upon the applicant and two other accused police-officers.

2.5 Aggrieved by the punishment order, the applicant filed an appeal before the departmental Appellate Authority (AA), i.e., Commissioner of Police, Delhi (Annexure A-9). The AA passed the impugned Annexure A-4 order dated 24.12.2010 rejecting the appeal. The applicant has sought quashment and setting aside the following:

- a) Order initiating Departmental Enquiry (DE) dated 18.01.2007 (Annexure A-1).
- b) Disagreement Note dated 27.10.2009 (Annexure A-2).
- c) Order of punishment passed by DA dated 18.1.2010 (Annexure A-3) and
- d) Order of the AA dated 24.12.2010 (Annexure A-4).

3. Pursuant to the notices issued, respondents entered appearance and filed their reply. The applicant, thereafter, filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 16.07.2016. Shri Anil Singal, learned counsel for the applicant and Mrs. Harvinder Oberoi, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that the EO, after conducting a detailed enquiry in the matter and based upon oral and documentary evidence, came to the conclusion that the charge framed against the applicant is not substantiated and that the DA has rejected the findings of the EO on surmises and conjectures. The learned counsel further submitted that a plain reading of the disagreement note issued by DA would go to indicate that the DA had in fact made up its mind to punish the applicant, although the

disagreement note states that the opinion formed by the DA is only tentative. It was also submitted that the Additional SHO Shri Satyajeet Sarin and ASI Rishi Pal Singh were working independently and hence no charge of lack of supervision can be inflicted upon the applicant. The learned counsel further submitted that the charge has been proved against the Additional SHO Shri Satyajeet Sarin and the applicant is being unnecessarily dragged into the controversy by accusing him of lack of supervision. Concluding his arguments, the learned counsel submitted that the enquiry report clearly establishes that the applicant was not at all guilty and as such, the orders passed by the DA and AA, inflicting the indicated punishment on the applicant as also Annexure A-1 order, initiating DE and Annexure A-2 disagreement note issued by DA are liable to be quashed and set aside.

5. Per contra, Mrs. Harvinder Oberoi, learned counsel for the respondents submitted that alongside the applicant, two other accused, namely Additional SHO Shri Satyajeet Sarin and ASI Shri Rishi Pal Singh were proceeded against in a common disciplinary enquiry. All three of them have been held guilty by the DA and vide a common order of the DA at Annexure A-3 all the three accused, including the applicant, have been given a punishment of withholding one increment

temporarily for a period of two years. She further submitted that the two co-accused namely Inspector Satyajeet Sarin and ASI Rishi Pal Singh had challenged the impugned Annexure A-3 order of the DA in OA-119/2012 and OA-1270/2012 respectively. Both the OAs have been dismissed by this Hon'ble Tribunal vide orders dated 21.12.2015 and 06.11.2015 respectively. She submitted that the applicant was incharge of the Dilshad Garden Police Station in which additional SHO Shri Satyajeet Sarin and ASI Shri Rish Pal Singh were working. The SHO being the head of the police station is responsible for every thing happening in the police station. He is also required to ensure that all the staff working in the police station are functioning properly. The applicant has the responsibility of exercising supervising authority over all the staff and that he cannot absolve himself from such a role. She further submitted that the DA has given cogent reasoning in the disagreement note to substantiate as to why DA is differing from the findings of the EO *qua* the applicant. Concluding her arguments, she said that the applicant being head of the police station, miserably failed in his supervisory duty and he has rightly been punished by the DA and AA and hence the prayers made by him in the OA deserve to be declined.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. It is not in dispute that the punishment orders passed by the DA and AA against the two co-accused persons namely Shri Satyajee Sarin, additional SHO and Shri Rishi Pal Singh, ASI have been upheld by the Tribunal. The applicant as well as these two co-accused were punished by a common punishment order passed by the DA (Annexure A-3).

7. The EO in his report has concluded that the charge against the applicant is not substantiated. However, the DA, for not accepting the findings of the EO, in his impugned disagreement note has giving the following reasons for the same:

"I have gone through the entire D.E. file including statements of witnesses:-

i) HC Sardar Singh (PW-3) has deposed in response to question raised by ASI Rishi Pal Singh that all the facts were brought into the notice of SHO Sh. Shyam Sunder Kausik.

ii) Shri Sanjay examined as PW-9 has deposed in response to question No.4 made by ASI Rishi Pal Singh, that HC Sardar Singh produced him before SHO/Dilshad Garden (Shyam Sunder Kaushik) during the course of enquiry of the said complaint and he informed the SHO that he did not steal the cheque of Anil Sarin (Question No.6).

iii) In response to question No.14, PW-9 deposed that SHO/Dilshad Garden came in the room twice where they were made sit by Addl. SHO. In response to question No.31, the witness has deposed that the SHO had asked Addl. SHO when he came in the room why they are made sit so far. Why they should not be put in lock-up?

iv) PW-12 Sh. Pradeep Kumar in response to question No.4 made by ASI Rishi Pal Singh had deposed that he was

produced before the SHO thrice during the course of said enquiry. He further deposed in response to question No.9 that the SHO asked Addl. SHO as to why they are made sit so far and ordered to put them in lock-up.

From the statement of above witnesses, it is evident that there was tacit consent of Inspr. Shyam Sunder Kaushik the then SHO Dilshad Garden for the entire episode which shows failure of supervision and incompetence on his part.

In view of above version of the witnesses, I tentatively disagree with the finding of the E.O. and Inspr. Shyam Sunder Kaushik, No.D-I/699 is called upon to submit his representation within 15 days from the date of receipt of the disagreement note failing which it will be presumed that he has nothing to say in his defence and the matter will be decided on merit. A copy of the finding of the E.O. is also enclosed."

8. We do not accept the argument of the learned counsel of the applicant that the disagreement note is based on surmises and conjectures; on the contrary, we find that solid reasons have been adduced by the DA in the disagreement note. Likewise, the AA has also given detailed reasoning for declining the appeal of the applicant in its impugned Annexure A-4 order.

9. The Hon'ble Supreme Court in the case of **B.C. Chaturvedi v. Union of India & Others**, [(1995) 6 SCC 746], spelling out the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to

hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

10. Further, the Hon’ble Apex Court in **Ashif Hamid v. State of J & K**, [(1989) Supp. 2 SCC 364] and **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, [(2006) 10 SCC 337] has further clarified the scope of judicial review as under:

“(i) While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.

(ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, the same cannot be interfered with.

(iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review.”

11. In the case of **State of Orissa & Ors. v. Gopinath Dash & others**, [(2005) 13 SCC 495], the Hon'ble Apex Court held as follows:

“the court should not substitute its own judgment for that of the executive in matters of policy, and further in assessing the propriety of a decision of the executive, the court cannot interfere even if a second view is possible than that of the executive.”

12. Applying the principles laid down by the Hon'ble Apex Court in its aforementioned judgments, we would like to observe that the enquiry has been conducted against the applicant in the prescribed manner, the applicant has participated in the enquiry and after following the laid down procedures, the DA and AA have passed their impugned orders. The principles of natural justice have been observed at every stage during the course of conduct of the DE proceedings. The punishment inflicted upon the applicant is also not found to be disproportionate to the offence committed so as to shock the conscience of the Judiciary.

13. We would further like to observe that every police station is required to maintain daily diary, which is a chronicle of various developments/activities that take place during the course of the day in the police station. The SHO being the head of the police station is expected to keep himself abreast

with the daily diary. As head of the Dilshad Garden police station, the applicant was duty bound to exercise supervisory control over all his subordinates. Perusal of the disagreement note, in which the DA has referred to the statements of some witnesses available in the DE file, indicates that the applicant was in full know of the development that had taken place relating to the criminal case under reference and has thus failed in his supervisory duty in preventing the illegality committed by his subordinates.

14. In the conspectus, we are of the opinion that the applicant indeed failed in his supervisory duties for which he has been rightly punished by DA and AA. As such, the OA being found devoid of merit deserves to be dismissed. Accordingly, the OA is dismissed.

15. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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