

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.935/2015

New Delhi this the 19th day of April, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Inspector Kusum Pal Malik, No.D/2950
Special Staff Outer District
S/o Shri Harbir Singh
R/o B-182, Chhattarpur Enclave, Phase-II,
New Delhi
Age: 49 years.Applicant

(Argued by: Ms. Jasvinder Kaur)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
Delhi Police,
MSO Building, I.P. Estate,
New Delhi.
2. Joint Commissioner of Police.
South Eastern Range,
PHQ,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
South District,
Hauz Khas.Respondents

(By Advocate : Shri Amit Anand)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), and emanating from the record is that applicant,

Inspector Kusum Pal Malik was posted as SHO, Vasant Kunj (North). On the night intervening 14/15.01.2013, he received a complaint from Shri Radhey Shyam S/o Late Shri Hari Vilas, in which he had stated that he met his neighbour Jai Prakash (accused) at Lajwanti Garden and both consumed liquor. The accused took keys of his Auto-Rickshaw bearing Registration No.DL 1RL3851 and tried to strangle him at Kishan Garh Road, Ber Sarai. The complainant overpowered him and took back the keys of his Auto-Rickshaw. Thereafter, the accused gave beating and snatched the purse of the complainant. His licence, badge etc. were thrown out of his Auto-Rickshaw at Kishan Garh Road, Ber Sarai. Although the applicant received information of the said cognizable offence, but instead of registering a case (FIR), the applicant only entered DD entry No.3-A in the police station in this regard.

2. According to the department, the Commissioner of Police (CP) has issued directions to all the Police Officers/SHOs that under no circumstances, a jurisdictional dispute be allowed to delay the police response. Immediate action should be taken by the officer, receiving the information to apprehend the accused and provide medical and other assistance without going into jurisdictional issue. The applicant showed gross negligence, disobedience and dereliction in discharge of his official duty for not registering

a criminal case against the accused for the cognizable offence. Consequently, notice dated 30.05.2013 (Annexure-3) was issued to the applicant to show cause as to why his conduct be not "Censured" for the above said lapses.

3. In pursuance thereof, he filed the reply dated 5.6.2013 (Annexure-4) to the show cause notice(SCN) wherein he has tried to project that on receipt of information that two persons had snatched the Auto-Rickshaw on Kishan Garh Road from the complainant, the call was registered vide DD No.29-A dated 14.01.2013 in Police Station, Vasant Kunj North. He immediately made a call on caller number who told that he was present in Lajwanti area and two persons have snatched his Auto-Rickshaw. He also talked to incharge of PCR van, who told that complainant Radhey Shyam was with them and call was received in Police Station, Maya Puri as well. It was alleged that SI Ravi Yadav also talked to the IO of Police Station, Maya Puri and complainant was asked to identify the place where he was dropped by the accused, but he failed to identify the place where he was dropped and also failed to explain how he reached at his residence. Then the IO of Police Station, Maya Puri and the complainant went back to Maya Puri.

4. Be that as it may, it was admitted that the incident originated in the jurisdiction of Police Station, Vasant Kunj. According to the applicant, he was not at fault because case

was registered in Police Station, Maya Puri and it has not been established that the complainant Radhey Shyam and accused had come on Aruna Asaf Ali Road in the area of Police Station, Vasant Kunj (North). Hence, he prayed for withdrawal of SCN. However, his reply was not found satisfactory.

5. Taking into consideration, the totality of the facts of misconduct and reply, the conduct of the applicant was “Censured” by impugned order dated 15.07.2013 (Annexure-1) by the competent authority. Similarly, the appeal filed by him was dismissed vide order dated 29.05.2014 (Annexure-2) by the Appellate Authority as well.

6. Aggrieved thereby, the applicant has preferred the instant OA to challenge the SCN and impugned orders invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The case set-up by the applicant, in brief, insofar as relevant, is that after receipt of the information, he and his staff immediately started enquiry and it was found that complainant had also reported the matter and an FIR has already been registered in the Police Station, Maya Puri. He was not at fault. The Disciplinary as well Appellate Authorities have failed to consider the explanation put forth by him and thus reached to a totally erroneous and legally non-sustainable conclusion.

8. According to the applicant, since the FIR had already been registered in Police Station, Maya Puri, there was no rationale to register another FIR for the same incident in Police Station, Vasant Kunj (North), no negligence, carelessness or slackness was attributed to the applicant in the SCN. It was pleaded that applicant and SHO Maya Puri were issued SCN in this regard, but SHO, Police Station, Maya Puri was found innocent by the Appellate Authority. He has also claimed parity on the basis of the case of SHO, PS, Maya Puri. The impugned orders were termed to be arbitrary, illegal and result of non-application of mind and without jurisdiction.

9. On the basis of the aforesaid grounds, the applicant has sought quashing of the impugned SCN and impugned orders in the manner indicated hereinabove.

10. The contesting respondents refuting the allegations of the applicant have filed reply wherein it has been pleaded that the SCN for Censure was issued to the applicant for his grave misconduct, negligence, carelessness and dereliction in discharge of his official duty. It was further pleaded as under:-

“A SCN for Censure was issued to Inspector K.P. Malik, No.D-2950 (PIS) No.28892733(the then SHO/V.K. North) vide this Office No.10241-44/SD(P-1) dated 30.05.2013 on the allegations that on perusal of PHQ's U.O. No.997-98/SO/SWR, dated 24.01.2013 issued by Joint C.P./SWR, Delhi as well as enclosed copy of report submitted by Addl. C.P./West District in connection

with case FIR No.11/2013, dated 15.01.2013 u/s 392/34 IPC Maya Puri, it came to notice that on 14.01.2013 complainant Shri Radhey Shaym S/o Late Shri Hari Vilas R/o Nangal Raya, Maya Puri, New Delhi met his neighbour, namely, Shri Jai Prakash at Lajwanti Garden and they both consumed liquor. Thereafter, Shri Jai Prakash asked complainant to handover the keys of his Autorickshaw (No.DL-IRL-3851) to his friends. Later on, the complainant gave the key to the said friends of Jai Prakash and also accompanied them in the Autorickshaw. When the complainant reached near Ber Sarai, Kishan Garh Road, the said friends of Jai Prakash tried to strangle the complainant. When the complainant resisted, they overpowered and took the keys from him. The complainant was also beaten, snatched his purse, licence, badge and then thrown out from his Autorickshaw at Kishan Garh, Ber Sarai Road. In this regard, a D.D. entry vide No.3-A dated 14/15.01.2013 was lodged at PS Vasant Kunj North and also an FIR No.11/13 dated 15.1.2013 u/s 392/34 IPC was lodged at Police Station, Maya Puri.

As per C.P./Delhi's directions under no circumstances, a jurisdictional dispute be allowed to delay the police response. Immediate action should be taken by the officer receiving the information to apprehend the accused and provide medical and other assistance without going into jurisdiction issues".

11. It was further averred that the SCN was rightly issued and the reply filed by the applicant was found to be unsatisfactory. Thereafter, his conduct was "Censured" by the competent authority by means of impugned orders.

12. Virtually, reiterating the validity of the impugned SCN and orders, the respondents claimed that it was the duty of the applicant to immediately register FIR and to investigate the case of cognizable offences. It will not be out of place to

mention here that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

13. Thus, it would be seen that the facts of the case are neither intricate nor much disputed. Such this being the position of material on record, the sole question that arises for determination in this case is as to whether the registration of FIR in question in Police Station, Maya Puri is sufficient to exonerate the applicant in whose jurisdiction the incident actually had occurred?

14. Having regards to the rival contention of learned counsel for the parties, we are of the firm view that answer must obviously be in the negative.

15. Ex-facie, the argument of the learned counsel that since the police of Police Station, Maya Puri has already registered the case, so there was no occasion for applicant to register the second FIR in Police Station, Vasant Kunj (North), for the same offence is not tenable.

16. What cannot possibly be disputed here is that the incident of beating and snatching the purse and Auto-Rickshaw/three wheeler of the complainant. It had occurred within the jurisdiction of Police Station, Vasant Kunj (North) where applicant was posted as SHO Incharge of the said police station. The registration of the case in Police Station, Maya Puri will not absolve him of the pointed serious lapses,

as urged on his behalf. It is not a matter of dispute that the gist of allegations of the complainant constitute offences of beating and robbery punishable under Sections 323, 392 IPC etc., which indeed are cognizable offences committed within the jurisdiction of the applicant. He had the power to arrest the accused in such cases as contemplated under Section 41 of the Code of Criminal Procedure, 1973 (for brevity "Cr.PC").

17. According to Section 154 of Cr.PC, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police Station, shall be reduced to writing by him or under his direction. Section 156 further posits that any officer incharge of the Police Station may, without the order of the Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of his Police Station would have power to enquire into or try under the provisions of Chapter XIII. Sub-section (2) provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer shall not empowered to investigate under this section.

18. Meaning thereby, it was obligatory and mandatory on the part of the applicant to immediately register an FIR and investigate the cognizable case of robbery etc. The mere fact that the police of Police Station, Maya Puri has registered a

case on the basis of information supplied by the incharge of PCR and the complainant, ipso facto, is not sufficient ground to exonerate the applicant from the indicated serious misconduct, particularly when admittedly the incident of robbery had taken place in the jurisdiction of PS Vasant Kunj (North).

19. This is not the end of the matter. The positive case of the department is that CP has issued directions to all the concerned police officers that under no circumstances, a jurisdictional dispute be allowed to delay the police response. Immediate action should be taken by the officer receiving the information to apprehend the accused and provide medical and other assistance without going into jurisdictional issues. Moreover, even if the case was registered in Police Station, Maya Puri, the applicant was required to obtain the relevant file of the case from there and to start immediate investigation in the matter. No material, much less cogent, is forthcoming on record even to suggest remotely that any such action has been taken in the case by the applicant.

20. Likewise, applicant cannot possibly claim the parity with the case of SHO, Maya Puri because he has promptly acted in the matter and immediately registered the FIR in the cognizable case without entering into jurisdictional issue whereas on the contrary, the applicant has miserably failed

to quickly register and investigate the cognizable case of robbery, which indeed amounts to grave misconduct and dereliction of duty. It is not at all expected from SHO of a disciplined force like Delhi Police.

21. Therefore, the Disciplinary Authority has rightly Censured the conduct of the applicant. The Appellate Authority has recorded valid reasons to dismiss his appeal. The Disciplinary as well as Appellate authority have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted by this Tribunal in the obtaining facts and special circumstances of the case.

22. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

23. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and instant OA. The O.A deserves to be and is hereby dismissed, as such. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh