

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2598/2012

Reserved on: 05.04.2018
Pronounced on: 11.04.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Rajesh Kumar
SI Delhi Police
PIS No.16970025
Aged about 40 years
R/o D-535, Tagore Garden Extn.,
New Delhi – 27.

...Applicant

(By Advocate: Sh. Anil Singhal)

Versus

Govt. of NCT of Delhi through

1. The Commissioner of Police,
PHQ, IP Estate,
New Delhi.
2. Joint Commissioner of Police,
Security, PHQ, IP Estate,
New Delhi.
3. DCP/Security (Operations)
Through Commissioner of Police,
PHQ, IP Estate,
New Delhi.

...Respondents

(By Advocate: Ms. Neetu Mishra for Mrs. Rashmi Chopra)

O R D E R

The applicant has filed the instant OA under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash the impugned show cause notice dated 20.10.2011 (Annexure A-1); disciplinary order dated 16.11.2011 (Annexure A-2) imposing punishment of censure upon the applicant and the appellate order dated 26.04.2012 (Annexure A-3) confirming the punishment of censure.

2. Brief facts of the case are that the applicant, while posted at PS Mahendra Park, registered an FIR No.229/2010 and arrested the accused. Subsequently, as per the orders of ACP/Sub-Division, Shalimar Bagh, the applicant handed over the case file to PSI Sandeep Kumar after informing the SHO, PS, Mahendra Park vide DD No.30-A dated 23.10.2010. The applicant further submits as he was transferred to Security Unit on 30.04.2011, he handed over pending case files to MRC (R)I PS, Mahendra Park vide list of handing over of pending case files including the case file FIR No.229/2010, which fact is also reflected in the IO-wise case file register. It is further submitted that said PSI Sandeep Kumar was transferred to Distt. Lines, Anand Vihar and consequently he also handed over the pending files with him to MHC (R)I, P.S. Mahendra Park vide list of handing over of pending case files No.12-A dated 13.06.2011 including the FIR No.229/2010. However, all of sudden the applicant received Explanation dated 24.08.2011 (Annexure A-7) calling upon his explanation for keeping the case file of FIR No.229/2010 with him for a period of 6 months and non-preparation of Challan to which he submitted a detailed reply dated 30.08.2011 annexing DD No.30-A dated 23.10.2010, IO-wise case file register and list of handing over pending case

files with PSI Sandeep Kumar. The applicant submits that without considering his reply to the Explanation, he was served with a Show Cause Notice dated 21.10.2011 (Annexure A-1) proposing to impose a punishment of censure upon him. He further submits that without considering his detailed reply, the respondents in utter violation of rules and regulation and without considering the principles of natural justice imposed the punishment of censure vide order dated 16.11.2011 (Annexure A-2). Aggrieved, the applicant preferred an appeal explaining the background of the case and raising number of questions of facts and law for re-consideration of his case and to quash and set aside the impugned order of punishment. The appellate authority also did not take into account the grounds of the applicant raised in the appeal and mechanically rejected the same by passing a non-speaking and cryptic order. Contention of the applicant is that to his dismay the respondents while imposing upon the impugned punishment of censure even overlooked the documentary proof of DD No.30-A dated 23.10.2010 which clearly proved that he had handed over the case file to PSI Sandeep Kumar after informing the SHO, PS Mahendra Park vide as per the orders of ACP/Sub-Division, Shalimar Bagh. In this view of the matter, the applicant prays that the instant OA

be allowed by quashing and setting aside the impugned orders.

3. The respondents have filed their written reply denying the averments made by the applicant in the OA. The respondents submit that the case set up by the applicant that as he stood transferred to Security Unit on 23.10.2010 and handed over the pending files including FIR 229/2010 to MHC(R) IPS Mahendra Park on 23.10.2010 itself and no responsibility can be fastened on him is false and against the factual position as he was relieved only on 10.03.2011 and it is only thereafter the investigation of the case was carried out by SI Sandeep Kumar i.e. on 15.03.2011 as evidenced from the entries made by the applicant in the case diaries. The respondents further submit that FIR No.229/2010 was registered by the applicant on 23.10.2010, investigation began, statement u/s 161 Cr.PC was recorded and the case was closed on 23.10.2010 itself by the applicant. Further, statement of one Devender Kumar (Ex.ASI) Technical in reference to case FIR No.229/2010 dated 23.10.2010 was got recorded by the applicant on 29.10.2010. The respondents submit that further proceedings were also conducted by the applicant on 25.10.2010 in FIR No.229/2010 also when the bus was released on Superdari vide case diary no.2 dated

25.10.2010. The respondents further submit that 6 months thereafter the case file was handed over to MHC (R) by the applicant on the ground of his transfer and thereafter the case was received by SI Sandeep Kumar on 15.03.2011 for further investigation. It is also submitted that case of the applicant is falsified even otherwise by his document-Annexure A-5 which reveals that though the list of handing over cases is written in *seriatim*, but FIR No.229/2010 dated 23.10.2010 under Section 279/427 IPC finds mention in the last i.e. after 13.11.2010, which addition amounts to an act of afterthought. The respondents submit that in nutshell the fact is that the applicant kept the file pending with him for a period of 6 months without any reason without preparing the charge despite being the IO In-charge at the relevant point of time. However, the respondents, taking a lenient view, imposed a minor penalty of censure upon the applicant.

4. The applicant has filed the rejoinder to the reply of the respondents reiterating the averments made in the OA.

5. Heard the learned counsel for the parties and perused the material on record.

6. The pivotal issue involved in this OA is whether the applicant had actually handed over the case file in question

i.e. of FIR No.29/2010 on 23.10.2010 as claimed by him in the OA or was it handed over on 15.03.2011 to one SI Sandeep Kumar as stated by the respondents.

7. It is on record that the respondents, by way of an additional affidavit, have filed the following documents:-

- A. Case Diary No.23.10.2010
- B. Case Diary No. 2 dated 25.10.2010
- C. Case Diary No.3 dated 10.03.2011
- D. Case Diary No.4 dated 15.03.2011.

Put in a tabular form, the details emerge as follows:-

Sl. No.	Case Diary Number and date.	Status of the case	Remarks
1	1 dt. 23.10.2010.	<i>File is with the applicant</i>	
2.	2 dt. 25.10.2010	<i>File is with the applicant</i>	<i>On 25.10.2010, the bus involved in the case was released on Superdari under his signature.</i>
3.	3 dt. 10.03.2011	<i>File is with the applicant</i>	<i>However, on this date i.e.10.03.2011 the file was handed over to MHC (R) which fact is clearly reflected in Case Diary No.3 under the signatures of the applicant himself.</i>
4.	4 dt. 15.03.2011	<i>Case file was received by SI Sandeep Kumar</i>	<i>SI Sandeep Kumar, who received the case file on 15.03.2011, started further investigation in the matter.</i>

8. A perusal of the table clearly reveals that as per column 3 of the Table, the Case File No.229/2010 remained with the applicant till 10.03.2011 and the same was handed over to MHC(R) on 15.03.2011 vide Case Diary No.3 dated 10.03.2011 and thereafter the said file was

handed over to SI Sandeep Kumar, as depicted in column no.4 of the table vide Case Diary No.4 dated 15.03.2011 for further investigation in the matter. The applicant on the other hand has relied on Annexure A-5, which is an unsigned document. The respondents have rightly raised doubts about the authenticity of this document. They have stated in the reply that undoubtedly the entry of the file in question finds mention at the bottom of the list but all other entries made in Annexure A-5 are *seriatim*, which factum clearly shows the foul play on the part of the applicant. The respondents submit that if the averment of the applicant that he had handed over the case file No.229/2010 along with other files to SI Sandeep Kumar on 23.10.2010 is taken to be correct, he would have mentioned the said file at the right place in the Annexure A-5, but that is not the case here. Entry of the case file No.279/2010 dated 23.10.2010 at the bottom i.e. after 13.11.2010 suggests that the said entry might have been a result of afterthought. Further, this document is neither signed by anyone nor there is an affidavit by the applicant regarding the authenticity of this document and the entries in it.

9. I have, therefore, before me overwhelming evidence supported by documents to conclude that the statement of

the applicant that he had handed over the case file No.229/2010 to SI Sandeep Kumar on 23.10.2010 is not correct and not acceptable. As a matter of fact, it is a serious matter to seek relief in the OA placing on record wrong facts. The argument of the learned counsel for the applicant, therefore, that the applicant had handed over the case file in question on 23.10.2010 does not seem to be correct and the same is accordingly not sustainable in the eyes of law.

10. Resultantly, I am of the considered opinion that the applicant has not been able to prove the factum of handing over the case file No.229/2010 to MHC (C) on 23.10.2010 and resultantly I do not find fault with the respondents in imposing minor punishment of censure on the applicant. The O.A. is accordingly dismissed being misconceived. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/