

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

O.A No.100/2637/2011

New Delhi this 24th day of August, 2016

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

Hon'ble Mr. V.N. Gaur, Member (A)

Sh. Hoshiyar Singh
S/o. Sh. Ram Singh
R/o RZ-168, Indira Park,
Uttam Nagar, Delhi-59.

....Applicant

(Argued by: Mr. Ajesh Luthra, Advocate)

Versus

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
2. Jt. Commissioner of Police,
Southern Range,
Police Head Quarter,
I. P. Estate, New Delhi.
3. Deputy Commissioner of Police,
(Distt. West),
P.S. Rajouri Garden,
New Delhi.

....Respondents

(By Advocate : Mr. N. K. Rohtagi for Mr. Vijay Pandita)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by applicant, Inspector Hoshiyar Singh (since retired), is to the impugned Show Cause Notices (SCNs) dated 19.11.2009 (Annexure A-4), dated 26.05.2010 (Annexure A-3), impugned orders dated 24.09.2010 (Annexure A-2) of the

Disciplinary Authority (DA) and dated 10.02.2011 (Annexure A-1) of the Appellate Authority (AA).

2. The compendium of the facts & material, relevant for disposal of the instant OA, and exposted from the record, is that, applicant was posted as SHO of PS Bindapur at the relevant time. Complainant Shri Rajesh Kumar S/o Shri Chottu Ram had submitted number of complaints pertaining to the plot bearing Plot No.72, Block B-I Extension, Sewak Park, New Delhi, some directly to the SHO and other through DCP/SW. The applicant has entrusted the complaints to different Investigating Officers (IOs) for conducting the enquiry. According to the respondents, applicant has neither issued any directions to complete the enquiry nor discussed the progress of the matter nor obtained legal opinion on the complaints. Thus, he was stated to have failed in performing his supervisory duty, as SHO, of the concerned Police Station.

3. As a consequence thereof, initially first impugned SCN dated 19.11.2009 (Annexure A-4) was issued and applicant filed reply dated 28.12.2009 (Annexure A-5). The DA sent the reply of the applicant, before Commissioner of Police, Delhi, which was found not satisfactory. Accordingly, the DA issued second impugned SCN dated 26.05.2010 (Annexure A-3) to the applicant as to why his conduct be not Censured in this regard. In pursuance thereof, the applicant filed detailed reply dated 15.06.2010 (Annexure A-6).

4. However, again the reply did not find favour and conduct of the applicant was Censured, vide impugned order dated 24.09.2010 (Annexure A-2) by the DA.

5. Likewise, the appeal filed by the applicant was dismissed by way of impugned order dated 10.02.2011 (Annexure A-1), by the AA as well.

6. Aggrieved thereby, the applicant has preferred the present OA, challenging the impugned SCNs and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

“(A) Because the impugned action/orders of the respondents are illegal, arbitrary, uncalled, without proper application of mind and mechanical.

(B) Because in his reply to the show cause notice dated 19.11.2009 whereby initiation of disciplinary action was proposed and also at later stages relating to penalty proceedings including his appeal, the applicant had submitted a detailed and comprehensive reply. The contentions was not considered at all and brushed aside arbitrarily. It was baselessly stated that the applicant dealt with the matter casually and failed to supervise the enquiry properly. The applicant had specifically averred that the applicant was posted at P.S. Bindapur w.e.f. 5.9.2008 to 10.06.2009 and the first complaint of Complainant Sh. Rajesh Kumar was received at the Police Station on 1.08.2008 which was marked to ASI Mahender Singh by applicant's predecessor. The subsequent complaints dated 31.10.2008, 5.11.2008, 16.12.2008, 27.12.2008 and 26.02.2009 contained the gist of the first complaint dated 1.8.2008 and were a sort of reminders only and were marked to different enquiry officers available at the respective point of time for enquiry and report. As submitted above, the first complaint through the then ACP/Dabri along with a detailed report and the ACP had also recommended for filing of the said complaints.

(C) The applicant had further submitted that the Inquiry Officers had been briefed by him from time to time and Sh. Dig Vijay Singh – Inspector/Investigation was also directed to assist and guide the IOs. No IO was kept in dark. The applicant further submitted that complainant had been pressurizing for registration of F.I.R. while no crime had been found committed in the jurisdiction of PS Bindapur and even the ACP/Dabri, the applicant's immediate superior, had recommended filing of the complaints.

(D) Because the applicant has specifically pleaded to the authorises at all stages that even when an F.I.R. was registered at the repeated insistence of the complainant Sh. Rajesh Kumar who happens to be an

advocate, the investigation has been transferred to P.S Subzi Mandi as P.S Bindapur lacks jurisdiction.

(E) Because the applicant has further specifically pleaded to the authorities that the entire progress on the complaints used to be discussed with Inquiry Officers and ACP/Dabri from time to time and the enquiry was carried out under the supervision of the then ACP/Dabri. The complaints were of forged documents which required thorough and detailed enquiry and time consuming.

(F) Because the submissions of the applicant have not been considered at all by the authorities at any stage.

(G) Because the penalty proceedings are vitiated as the C.P Delhi had already stated that the applicant's reply to the SCN dated 19.11.2009 is unsatisfactory. Once the C.P. Delhi had recorded his dissatisfaction, it is not expected from the lower authorities to deviate from the same. Besides the above, it is submitted that there is no reason recorded by the C.P Delhi that as to how the applicant's reply was unsatisfactory, more particularly, when the various contentions of the applicant have not been dealt with.

(H) Because it was only due to insistence of the complainant and after discussing with superior officers, the applicant had sought legal opinion from the prosecution branch and as to whether a case is made out or not. Hence a proposal was sent by the applicant, to that effect. Thereafter, the applicant stood transferred as SHO/Moti Nagar. The F.I.R. registered subsequently at P.S Bindapur i.e FIR No. 741 dated 2.8.2009 u/s 420/468/471/34 IPC was transferred to P.S. Subji Mandi due to lack of jurisdiction of P.S. Bindapur.

(I) Because even the penalty proceedings have been wrongly initiated with a prejudiced and biased state of mind.

(J) Because the impugned actions (sic) are violative of principles of natural justice. The applicant has been punished for no genuine reason and the disciplinary authority has penalised the applicant for not obtaining legal opinion from the prosecution branch, at initial stages itself and the said order has been illegally upheld in appeal by the appellate authority on the ground of not monitoring the enquiry into complaints and marking the same to different IOs in a routine manner leading to malpractices and irregularities' which are unknown.

(K) Because it is a case of perversity and arbitrariness in award of penalty. There is no consideration of the reply and the stand of the applicant has nowhere been considered.

(L) Because there are no guidelines issued by the department regarding seeking legal opinion from the Prosecution Branch. It is unfounded to say that the applicant should have sought legal opinion from the prosecution branch in the matter as there are no set criteria for the same. Further, it is not that the opinion from prosecution branch is to be obtained on each and every complaint and it is left to the discretion of officers. Even the superior officer of the applicant i.e. ACP/Dabri did not suggest so. However, in the present case, even after the opinion from prosecution branch, the F.I.R. had to be transferred to the concerned police station since no offence has been found committed in the area and jurisdiction of P.S. Bindapur. In any case, it is a settled legal position

that error of judgment is not a misconduct, much less culpable misconduct.

(M) Because the impugned actions/order are otherwise also illegal and liable to be set aside.”

7. Thus on the strength of the aforesaid grounds, the applicant sought quashing of the impugned SCNs and orders being arbitrary, illegal and without jurisdiction, in the manner indicated hereinabove.

8. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded, that a vigilance enquiry was conducted on the complaint of Complainant Shri Rajesh Kumar and it revealed, that the applicant has neither issued any directions to complete the enquiry nor discussed the progress of the matter nor obtained legal opinion on the complaints. However, the respondents have duly acknowledged that the applicant filed the reply, wherein it was mentioned that one Rajesh S/o Shri Ram Prasad was residing as a tenant in the property in question. On 25.07.2006, when complainant Rajesh Kumar (attorney) asked the tenant to vacate the premises, he did not agree to vacate and threatened him with dire consequences with the help of his brother. On 05.08.2006, complainant (attorney) had filed suit for permanent injunction against the tenant, wherein the Civil Court directed the parties to maintain status quo with regard to the possession of the disputed premises, vide order dated 07.08.2006. The Civil Suit is still pending in the Civil Court, and as such, no police action was warranted at that stage.

9. The respondents admitted that the applicant further pleaded in his reply to the SCNs, that the complainant Rajesh Kumar had submitted many complaints containing the gist of his first complaint dated 01.08.2008. All the complaints were examined, and no offence was found to have been made out in the area of PS, Bindapur. Hence, the complaints had been sent to DCP/SW along with the detailed report of ACP, Dabri, who had also recommended for filing of the above said complaints.

10. Later on, the complainant met the senior officers and with their approval, legal opinion from the prosecution branch was obtained and criminal case was registered with regard to the alleged forged documents, filed in the Civil Court by the accused (opposite side), vide FIR No.241 dated 02.08.2009 under Section 420 PS Bindapur. Since the place of occurrence fell within the jurisdiction of PS Subzi Mandi, so the investigation of the case was transferred to PS Subzi Mandi. It was claimed by the respondents that since the applicant has failed to perform his supervisory duty, so his conduct was rightly Censured by DA and maintained by AA.

11. Virtually acknowledging the factual matrix and reiterating the validity of the impugned SCNs & orders, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

12. Controverting the allegations pleaded in the reply of the respondents and reiterating the grounds contained in the OA,

the applicant filed his rejoinder. That is how we are seized of the matter.

13. It is not a matter of dispute that the applicant has already retired from service on 31.03.2015, after attaining the age of superannuation, during the pendency of this OA.

14. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be accepted, for the reasons mentioned hereinbelow.

15. As is evident from the record, that the DA has initially issued first SCN dated 19.11.2009 (Annexure A-4) for alleged misconduct and in pursuance thereof, the applicant filed a detailed reply dated 28.12.2009 (Annexure A-5). Instead of himself considering the matter, the DA has forwarded the reply of the applicant to the Commissioner of Police, Delhi, for the reasons best known to him. As per record, the Commissioner of Police, Delhi, found the reply of the applicant unsatisfactory. Thereafter, based on the opinion of the Commissioner of Police, Delhi, DA has issued second impugned SCN dated 26.05.2010 (Annexure A-3) on the same cause of action (misconduct) and the applicant again filed the detailed reply dated 15.06.2010 (Annexure A-6). It has specifically been depicted in the impugned second SCN (Annexure A-3) that the reply filed by the applicant to the first SCN was also put up before the

Commissioner of Police, Delhi, which was not found satisfactory by him.

16. Meaning thereby, the DA has not applied its own independent mind and based his decision on the opinion of CP, Delhi. It was obligatory on the part of the DA, to consider the detailed reply (Annexure A-5) of the applicant, and then to pass appropriate order. Instead he adopted a very novel method and issued second impugned SNC for the same cause of action (misconduct), which is not legally permissible.

17. This is not the end of the matter. The learned counsel for the applicant has also placed on record the report dated 16.03.2009 (Annexure A-8), wherein after taking into consideration the facts that matter is sub-judice in the Civil Court and no offence had taken place in the area of PS Bindapur, the complaints of complainant Rajesh Kumar were ordered to be filed by ACP, Dabri. The learned counsel for the respondents has fairly acknowledged this fact.

18. Therefore, once it is proved on record that the subject matter of validity of the documents or otherwise, is *sub judice* before a Civil Court, and the ACP, Dabri has already ordered the filing of the complaints of the complainant on 16.03.2009, in that eventuality, it remained an unfolded mystery that what prompted the DA to issue first impugned SCN on 19.11.2009 (Annexure A-4) and second impugned SCN on 26.05.2010 (Annexure A-3) to the applicant. Moreover, it is now well settled principle of law, that once the matter of genuineness,

validity or otherwise, of the indicated documents, is pending in the Civil Court and matter had been closed by the ACP, Dabri, then the parallel investigation of criminal case to judge the validity of the same very documents (already produced in Civil Court), by the Investigating Officers, was not justified in the present set of circumstances. Therefore, it cannot possibly be saith that the applicant has failed to perform his supervisory duty in any manner. Hence the impugned SCNs are arbitrary & illegal and any impugned orders passed by DA & AA on the basis of such illegal SCNs, would naturally fall on its own legs, and cannot legally be sustained.

19. There is yet another aspect of the matter, which can be viewed entirely from a different angle. A bare perusal of the record would reveal, that the applicant has raised very important points in his detailed replies (Annexure A-5) and (Annexure A-6) to the impugned SCNs, but the same were just ignored with impunity by the DA. The same very error was repeated by the AA. It was obligatory on the part of the AA to pass reasoned order.

20. Thus the impugned orders are also non-speaking, result of non-application of mind and lack reasons. The DA and AA were required to record valid/cogent reasons, while dealing with the issues raised by the applicant in his replies, being quasi judicial authorities. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. The quasi-judicial authorities are required

to reach a conclusion, which according to law is just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution. Such authorities are required to pass reasoned and speaking orders in view of ratio of law laid down by the Hon'ble Apex Court in the cases of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764*** and ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253***.

21. Thus seen from any angle, the impugned SCNs and orders are illegal, arbitrary, unjustified, cannot legally be maintained and deserve to be set aside in the obtaining 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, the instant OA is accepted. The impugned Show Cause Notices dated 19.11.2009 (Annexure A-4) & dated 26.05.2010 (Annexure A-3) and impugned orders dated 24.09.2010 (Annexure A-2) of the Disciplinary Authority and dated 10.02.2011 (Annexure A-1) of the Appellate Authority are hereby set aside. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
24.08.2016

Rakesh