

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1912/2013

New Delhi, this the 5th day of October, 2016

Hon'ble Mr. P.K. Basu, Member (A)

Inspector Brijesh Namboori
No.D/2985 (PIS No.16900031)
4th Bn. DAP
Kingsway Camp,
New Delhi.

.. Applicant

(By Advocate : Shri Gyanendra Singh)

Versus

1. The Commissioner of Police,
PHQ, MSO Building,
ITO, I.P. Estate,
New Delhi.
2. The Dy. Commissioner of Police,
North East District,
Delhi.
3. The Joint Commissioner of Police,
South Eastern Range,
Delhi.

.. Respondents

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

ORDER (ORAL)

Heard the learned counsel and perused the relevant documents.

2. The applicant, Shri Brijesh Namboori, who is an Inspector in Delhi Police, was issued a show cause notice dated 10.03.2011 for

delayed registration of FIR in a motorcycle theft case by more than a month. The applicant in his reply took the defence that the complainant was asked to report to the police station, but since the complainant went to Punjab for some business on the same day, only on return from Punjab, he appeared in the police station on 26.12.2010 and gave a statement about the incident and FIR No.302/2010 dated 26.12.2010 u/s 379 IPC was registered on his statement. The Disciplinary authority vide order dated 29.04.2011 passed an order imposing the minor penalty of "censure" primarily rejecting the stand taken by the applicant that the complainant had gone to Punjab and, therefore, the FIR could not be registered earlier, as not a convincing plea at all. The applicant filed an appeal before the Joint Commissioner of Police which was also rejected vide order dated 23.10.2012.

3. The learned counsel for the applicant states that the FIR, which was filed, itself mentions that the complainant had stated that the complainant was in the city on 14.11.2010 in the morning, but thereafter he went to Punjab for his business work on the same day and came to the police station only after returning from Punjab on 26.12.2010. It is argued that this fact, which was recorded in the FIR itself, has not been gone into by either the Disciplinary Authority or the Appellate Authority whether this fact is correct or

not and both the parties have surmised that this plea was not a convincing plea at all.

4. Learned counsel for the respondents states that delay of registration of FIR by more than a month by the applicant is a matter of grave misconduct, negligence and carelessness in discharge of his duties and, therefore, the O.A. should be dismissed. She also relied on order of this Tribunal in O.A. No. 4134/2013 which was also a case of delayed registration of FIR and the explanation of the charged officer there was also that despite several attempts the complainant could not be contacted and, therefore, there was a delay in filing the FIR. The O.A. which had been filed by the charged employee in that case was dismissed. It is stated on the basis of the order of the Tribunal in O.A. No.4134/2013 that this O.A. should also be dismissed.

5. Learned counsel for the applicant, however, pointed out that the facts of the case in both the OAs are different and, therefore, order passed in O.A. No.4134/2013 cannot be set as precedent. Learned counsel further argues that though action has been initiated against him, who is an Inspector, there is no action against ASI Habib Ahmed, who had been handed over the case after the call was received by the police station on 14.11.2010. It is stated that in

a similar O.A. the Tribunal had taken a view that this amounts to discrimination.

6. The fact of this case is that there was a delay of more than a month in filing of the FIR in the case of theft of motorcycle. The applicant's explanation before the Disciplinary Authority was that the complainant himself left the city and went to Punjab after filing a telephonic complaint and came back only on 26.12.2010, on which date the FIR was lodged. The Disciplinary Authority and the Appellate Authority rejected this on the ground that this is not a convincing plea at all. The law is well settled in the case of departmental proceedings. The requirements are not as stringent as in criminal proceedings, where guilt has to be proved beyond any reasonable doubt. Departmental proceedings are based on the principle of preponderance of probability.

7. In this case, the Disciplinary Authority came to the conclusion that the reason for delay was not a convincing plea. I see no reason to question this. The principle of preponderance of probability will operate. The settled law is that Tribunals should not get into re-appreciation of evidence in departmental proceedings. Also, the fact of each departmental proceeding is unique and cannot be compared. Moreover, what view the respondents have taken in the

case of ASI Habib Ahmed will not affect the finding in this O.A. The complainant having informed the police station at 6.35 in the morning, it is not believable that for the whole day, the FIR could not be registered and, therefore, I am not persuaded by the argument made on behalf of the applicant and do not wish to interfere in the orders passed by the Disciplinary Authority dated 29.04.2011 and Appellate Authority dated 23.10.2012. The O.A. is accordingly dismissed. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/