

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No.1964/2015
with
OA No.1967/2015
OA No.4443/2014**

**Reserved On:15.03.2016
Pronounced on:05.04.2016**

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

(1) OA No.1964/2015

Atul Sood, No.D/3013, PIS No.16900058
 Age 47 years Designation: Inspector (Group-B)
 Posting at: Incharge Lock Up Tis Hazari Courts, Delhi
 Unit 3rd Bn. DAP Delhi Police S/o Shri Sansar Chand Sood
 R/o 251-E, MIG Flats, Rajouri Garden,
 New Delhi-110027.Applicant

(2) OA No.1967/2015

Rajesh Shukla No.D/656, PIS No.16970164
 Age 41 years Designation: Sub-Inspector (Group-C)
 Posting at EOW (Crime Branch) Mandir Marg, New Delhi
 S/o Late Shri Uma Shankar Shukla
 R/o 1787, 3rd Floor, Pratap Street, Chuna Mandi,
 Paharganj, New Delhi-110055. ...Applicant

(3) OA No.4443/2014

Ritu Raj, Age 47 years Designation: Inspector, Delhi Police,
 No.D/3976, PIS No.16990001
 S/o Late Shri Kapil Dev Narayan
 R/o EC-32, Top Floor, Inderpuri, New Delhi.

Presently posted as: Inspector, Unit 3rd Bn. DAP,
 Delhi Police, Vikas Puri,
 New Delhi.Applicant

(Argued by: Mr. S.C. Sagar, Advocate)

Versus

1. Delhi Police
 Through Commissioner of Police,
 Police Headquarter, I.P. Estate, New Delhi.

2. Govt. of NCT of Delhi through Chief Secretary,
Players Building, I.P. Estate,
New Delhi.Respondents

(By Advocates : Shri Amit Anand for Respondents in OA
No.1964/2015

Mrs. P.K. Gupta for Respondents in OA
No.1967/2015

Ms. Sumedha Sharma for Respondents in
OA No.4443/2014)

ORDER

Justice M. S. Sullar, Member (J)

As identical questions of law and facts are involved, therefore, we would like to decide Original Application (OA) bearing No. 1964/2015 titled as **Inspector Shri Atul Sood Vs. Delhi Police and Another** (for brevity 1st case), OA No.1967/2015 **Sub-Inspector Shri Rajesh Shukla Vs. Delhi Police and Another** (for short 2nd case) and OA No.4443/2014 **Inspector Shri Ritu Raj Vs. Delhi Police and Another** (in brief 3rd case) filed by the same counsel, arising out of similar impugned orders of Disciplinary and Appellate Authorities, by means of this common order to avoid the repetition of facts. Moreover, the learned counsel for the parties are fairly *ad idem* that indicated OAs can effectively be decided by a single order.

2. The matrix of the facts, material and evidence expository from the record and relevant for deciding the core controversy involved in the instant OAs are that applicant, Shri Atul Sood (in first case) was posted as SHO of Police Station, Sarojini Nagar, applicant Shri Rajesh Shukla (in

the second case) was posted as Sub-Inspector in Sarojini Nagar, Police station whereas applicant Shri Ritu Raj (in the third case) was posted as SHO of Police Station, Saket at the relevant period.

3. The Respondents claimed that on 07.10.2013, Deputy Commissioner of Police, South District conducted a surprise check of Sarojini Nagar Market. Sequelly, on 11.03.2013 vigilance inspected PVR, checked the Saket Market, in view of the festive season to see on ground, the implementation of directions given by the senior officers, to take adequate anti-terrorist measures to prevent any terrorist strike or any untoward incident in the areas. They found that huge encroachments were made by rehri, patriwalas and vendors and there was no control of local police, in preventing and removing the encroachments in the markets of their respective jurisdictions. Consequently, the impugned show cause notices dated 14.10.2013 (Annexures-C), for imposing minor penalties, were issued to Applicants, Shri Atul Sood (in first case), to Shri Rajesh Shukla (in second case) and dated 17.06.2013 (Annexure-B) to Shri Ritu Raj (in third case) in this regard.

4. In pursuance of the show cause notices, the applicants filed their replies, denying the allegations contained therein and indicating the steps taken by them, in performance of their official duty, to prevent and remove the encroachment etc. It will not be out of place to mention here that detail

contents of show cause notices and replies are not being mentioned at this stage as the same have been recorded in the impugned punishment orders which would be reproduced in the later part of this order with a view to avoid repetition.

5. Taking into consideration the allegations and the fact that the replies of the delinquent police officers in 1st and 2nd case were found to be not satisfactory, their conduct was Censured vide the impugned order dated 21.01.2014 (Annexure-B) by the Disciplinary Authority, which, in substance, is as under:-

“ ORDER

A show cause notice for censure was issued to Inspector Atul Sood, No.D-3013 (PIS No.16900058) (SHO/Sarojini Nagar) vide this office No.17133-135/HAP/SD(P-1), dated 14.10.2013, on the allegations in that, on 07.10.2013, in view of ongoing festive season, the undersigned conducted surprise check of Sarojini Nagar Market to see the on ground implementation of the directions given by the senior officers to take adequate anti-terrorist measures to prevent any terrorist strike or any other untoward incident. The undersigned had earlier directed the SHO/Sarojini Nagar not to allow any raised platform for tehbazari and encroachment in the market but to my shock and surprise, the same has again cropped up despite repeated directions. Also huge encroachment was found to be made by rehri/patriwalas and vendors in the market and there is no control of local police in preventing it. Since, Sarojini Nagar Market is one of the most crowded markets in South Delhi and has earlier been targeted by the terrorist, it is imperative for the SHO/Sarojini Nagar to make full proof security arrangements and to ensure proper implementation of anti-terrorist measures. In this regard, regular directions have been issued to SHO/Sarojini Nagar. Besides, senior officers had earlier conducted many surprise checks and pointed out to prevent raised platforms for tehbazari and also encroachment. Not only this time but every time, he failed to comply the directions given in this regard. It appears that he has no interest in ensuring the compliance of directions given by senior officers.

A copy of the show cause notice was served upon Inspector Atul Sood. No.D-3013 for submitting his written reply against the same. Accordingly, he submitted his written reply. I have carefully gone through the written reply submitted by him, in which his main submissions are that

action has been taken against unauthorized encroachments and vendors in the market in cooperation with NDMC. Action was taken under Heads 83.97 DP Act (in 539 cases), 66 D.P. ACT (in 1188 cases) and 283 IPC (in 34 cases). 6X4 feet yellow strip had been drawn along the tehbazaris to restrict them from encroachment. They were directed to place their articles on ground as per the conditions of tehbazari. Beat Officers were daily briefed to ensure compliance. The shopkeepers were stricted to a limit of 2 feet from the shutters. P.A. system was strengthened to sensitize the public regarding anti-terrorist measure. Extra 'Morchas' have been constructed to strengthen the security of market. It was ensured that the vehicles of visitors are parked in MLCP, DLF Mall. Movement of emergency vehicles was ensured in case of contingency by maintaining 'No Parking Areas' and regular meetings were held with the Market Association to sensitise them regarding security threats. Letters were sent to NDMC authorities for construction of boundary wall (sic) with railings on the perimeter of S.N. Market to regulate the entry of visitors to the market, which was turned down. Sufficient staff is deployed daily in the market after proper briefing. The reply submitted by Inspector Atul Sood, No.D-3013 is much far from truth. Had the above actions/measures had been taken by him, the raised platform for tehbazari and encroachment could have not cropped up again, which was found during the checking in the Sarojini Nagar Market. Hence, the reply submitted by him is not found satisfactory. Therefore, the show cause notice issued to him is confirmed and the conduct of Inspector Atul Sood, No.D-3103 (PIS No.16900058) (SHO/ Sarojini Nagar) is hereby censured.

Let a copy of this order be given to him free of costs. He can file an appeal to the Joint CP/South Eastern Range, Delhi against this order within 30 days from the date of its receipt on a non-judicial stamp paper worth 00.75 paise by enclosing a copy of this order, if he so desires.

Sd/- 21.01.2014
(B.S. Jaiswal)
Dy. Commissioner of Police
South District: New Delhi"

Similar order was passed by the Disciplinary Authority on 07.01.2014 (Annexure-B) in 2nd case as well.

6. Likewise, in case of Inspector Ritu Raj, impugned order dated 17.06.2013 (Annexure-B) was passed, which reads as under:-

“ORDER

A Show Cause Notice for Censure was issued to Insp. Ritu Raj, No. D-3976, SHO/Saket (PIS No.16990001) vide this office No.6766-68/SD (P-I), dated 29.4.13, on the allegations that during the surprise checking of PVR Saket Market by

Inspr. Vigilance Cell, South Distt. on 11/3/2013 the following shortcoming were found:-

1. One Madho s/o Sh. Lohari Ram was found running an illegal tea stall in front of PVR reportedly for the last 15 years. He did not have any permission from concerned authority for the said stall.
2. A person namely Parmod running a Momos shop besides Nescafe staff infront of PVR without any permission on the concerned authority.
3. A flower shop being run by Nanku s/o Sh. Kishore Lal reportedly for the last 20/25 years without permission from MCD occupying a space of 10'x15' infront of PVR beside Nescafe stall.
4. An illegal garments stall being run in the open yard by Vicky infront of ING Vysa Bank ATM beside PVR Saket.
5. A coffee and cigarette stall being un in the open yard infront of ING Vysa Bank ATM by Madan Kumar s/o Sh. Hardesh Mishara reportedly for the last 20 Yrs. Whereas Smt. Rekha Rani is the owner of this stall. He failed to produce any valid permission from MCD.
6. A Food joint, Anands Curry Delite being run by Anand Verma, has illegally placed six tables with twenty four chairs in the open yards outside the shop, which are causing inconvenience to the general public.
7. Food joint Chutney D'lite being run by Dharmender s/o Sukhbir Sing Rawat under the ownership of Mohit Sharma, eight table with thirty chairs are placed outside the shop in open area, causing inconvenience to the general public.
8. Ram Sunder Gupta s/o Sh. Ashok Gupta running a shop in the name of "Prince Pan" under the owner ship of Yash. He is illegally running a sweet corn stall and Allu Tikki stall outside his shop.
9. Rajinder Gupta s/o Sh. Ram Gupta running "Friends Communication" a mobile repairs and recharge shop. He has setup an illegal Momos stall outside the shop.
10. Arvind Kumar s/o late Sh. Purshottam Parsad running a ladies item stall near PVR. The site of stall is allotted to Smt. Shweta Gupta by MCD Delhi under Tehbazari. The allottee has violated the norms of Tehbazari by extending the area of stall for about 8'x10' which is beyond the prescribed limit 6'x4'.
11. Bhim Singh s/o Sh. Sohan Lal running MK Book stall under the ownership of Gulshan Kumar. The site is allotted by MCD under Tehbazari. The allottee has violated the norms of tehbazari by extending the area of stall beyond the prescribed limit of 6'x4' by encroaching the surrounding area up to 12'x10'.
12. Anmol book stall being run by Sanjay s/o Pawan Dass under the owner ship of Anmol. The stall is illegal as the owner failed to produce any permission from MCD. He has occupied the space of 10'x15' for his stall.

13. Braham s/o Sh. Dharam Pal running Giani-Ice Cream shop adjacent to PVR Saket under the ownership of Mahesh Garg. The owner has put two tables with eleven chairs in the verandah/ pavement and in the open space infront of the shop, these tables and chairs are causing inconvenience to the general public.

14. Lebanese point of non veg. which is adjacent to PVR Saket being run by Sh. Bhagwan Dass s/o Sh. Govind Ram. They have put three tables and twelve chairs in the verandah and in the open space infront of their shop causing inconvenience to the general public.

15. Suraj s/o Sh. J. Hans (Sr. Manager), "The Kathis" which is adjacent to PVR Saket running the shop under the ownership of Sh. Amit Tyagi. The owner has setup an illegal 'Bher Puri' stall in the verandah and also placed six tables and fourteen chairs in the open space infront the shop which is causing inconvenience to the general public.

The copy of SCN for Censure was served upon Insp. Ritu Raj, No.D-3976, SHO/Saket. Accordingly, he submitted his written reply. He mainly pleads that all Division and beat staff posted at Police Station Saket has been briefed in daily morning and evening briefing to take legal action against the encroachers of public land and tehbazari holders who violated the Tehbazari in the area of PS Saket. Further action was also taken by the beat staffs from time to time against the violators. He was heard in O.R. on 09.6.13. His defence/pleas taken in his written reply as well as in oral submission in O.R. are found not convincing as all action by SHO has been taken after the Vigilance enquiry. Therefore, I have no alternative except to confirm the Show Cause Notice for Censure. Hence, the conduct of Insp. Ritu Raj, No.D-3976, SHO/Saket, is hereby censured.

Let a copy of this order be given to him free of cost. He can file an appeal to the Joint C.P./South Western Range, Delhi against this order within 30 days from the date of its receipt on a non-judicial stamp paper worth 00.75 paise by enclosing a copy of this order, if he so desires.

Sd/- 17/6/13
(B.S. Jaiswal)
Dy. Commissioner of Police
South District: New Delhi"

7. The appeals filed by applicants Atul Sood and Rajesh Shukla again the order of the Disciplinary Authority were dismissed by the Appellate Authorities vide impugned orders dated 26.12.2014 (Annexure-A). Likewise, the appeal filed by 3rd Applicant Ritu Raj was dismissed vide impugned

order dated 6.01.2014 (Annexure-A) passed by the Appellate Authority.

8. Aggrieved thereby, the applicants have preferred the instant OAs to challenge the impugned show cause notices, orders of the Disciplinary and Appellate Authorities, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

9. Sequelly, the case setup by the applicants, in brief, insofar as relevant is that show cause notices and impugned orders are illegal, unwarranted, arbitrary, bad in law, non-speaking, result of non-application of mind and against the principle of natural justice. According to the applicants, that the Disciplinary and Appellate Authorities did not consider the action taken by them as indicated in their respective replies, which render the impugned orders illegal. Moreover, the authorities were pre-determined to award the punishment of Censure to the applicants. It was submitted that the applicants, along with municipal officials, took effective steps from time to time (reproduced in the impugned orders) against unauthorized encroachment and vendors in their respective areas although it was not sole duty of police to prevent/remove the encroachments.

10. Similarly, it was pleaded that requisite number of Calendera (Kalandra) under different provisions of Delhi Police Act, 1978 (hereinafter referred to as "Act") and IPC

were registered against the encroachers during the period 01.01.2012 till 31.10.2013. Hence, according to the applicants, their defence has not been properly dealt with by the relevant authorities. In all, the applicants claim that not only their conduct was wrongly 'Censured' by the Disciplinary Authority but their appeals were also illegally rejected by the Appellate Authority.

11. Applicant Shri Ritu Raj has additionally pleaded that he came to know that later on 11.03.2013 vigilance department checked, videographed and photographed the market area of Saket for the purpose of ascertaining the encroachments etc. He had sought copies of the photographs and videographs by filing application dated 29.09.2014 vide diary No.2597 under the Right to Information Act, 2005 but the same have not been supplied to him till date which shows that the conduct of respondents was biased and illegal. On the strength of aforesaid grounds, the applicants have sought quashing of impugned show cause notices and the impugned orders of the Disciplinary and Appellate Authorities in the manner indicated hereinabove.

12. The contesting respondents refuted the allegations of the applicants and filed their reply wherein, it was, inter alia, pleaded that the applicants were directed not to allow, any raised platform for tehbazari and encroachment in the market but to the shock and surprise of the inspecting

senior police officers, the same had again cropped up despite repeated directions in that connection. Huge encroachments were found to be made by rehri, patriwalas and vendors in the areas of the ibid markets. Neither any provision was made for vehicles, in case of emergency, by maintaining no parking areas nor regular meetings were held with the market associations to sensitize them with the security threats. The contents of the replies to show cause notices were termed to be false and baseless. The contesting respondents, while reiterating the validity of show cause notice and the impugned orders, have stoutly denied all other allegations made by the applicants and prayed for dismissal of main OAs.

13. Controverting the allegations contained in the replies and reiterating the grounds taken in the OAs, the applicants filed their rejoinders. That is how we are seized of the matter.

14. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the considered opinion that there is no merit and the present OAs deserve to be dismissed for the reasons mentioned herein below.

15. Ex-facie, the main contention of the learned counsel for the applicants that the applicants, being the police officials, were not authorized to remove/prevent the

encroachments but still they took effective steps (mentioned in their replies) in order to prevent/remove the encroachments in their respective areas, but the same has been ignored by the Disciplinary and Appellate Authorities, is not tenable. Even National Policy for Urban Street Vendors formulated by Department of Urban Employment & Poverty Alleviation, Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi, would not come to their rescue. Although certain steps and actions were proposed to be taken, to prepare the Delhi Master Plan to accommodate the street vendors/trade and the planned development of various zones, but at the same time, it is nowhere mentioned therein that police would not take any effective steps under the relevant Act, rules and circulars to prevent/remove encroachment and to maintain law and order in their respective areas.

16. On the other end, Chapter-IV of Delhi Police Act confers power on the police to make regulations for regulating traffic and for preservation of order in public places and to give directions to the public to maintain law and order. Chapter-VI defines executive duties and powers of police officers. Not only that, Section 28 of the Act, inter alia, posits the power of the police to regulate traffic of all kinds in streets and other public places and to prevent danger/obstruction to the public. Instead of reproducing all the duties and power of the police as envisaged under

Section 28, suffice is to state that this section regulates the management of public places, streets and to control all kinds of activities in order to maintain law and order by the police officers. Similarly, Chapter-V deals with special measures for maintenance of public order and security of State.

17. Likewise, Section 83 of the Delhi Police Act postulates that no person shall cause obstruction in any street or public place by using any part of a street or public place as a halting place for vehicle or cattle, leaving any box, bale, package or other things whatsoever in or upon a street for an unreasonable length of time, or contrary to any regulation and by exposing anything for sale or setting out anything for sale in or upon any stall, booth, board, cask, basket or in any other way whatsoever. Chapter-X deals with removal of such obstruction. According to Section 110 of the Act, whoever contravenes, or abets the contravention of, any regulation made under Section 28 or any of the conditions of licence issued under such regulation shall, on conviction be punished accordingly to the sentence mentioned therein. Correspondingly, Section 113 provides the penalty for contravention of orders, etc., under Sections 29 to 34. Indeed, Sections 109 to 122 deals with imposition of penalties under different situations in this relevant connection.

18. Besides it, Section 28(i)(b) of the D.P. Act and Circulars read with Regulations 14 and 15 of Regulation of Traffic and other Matters (Delhi Union Territory) Rules, 1959 cast a duty on SHOs and their field staff to keep roads/footpaths etc. clear of all encroachments by hawkers and squatters etc. and also to prevent jhuggies from coming up by taking firm action against such encroachments.

19. Similarly, Standing Order No.250, inter alia, provides that local police shall exercise sharp vigil to check encroachments on public lands suo moto and bring instances to the notice of local bodies/departments concerned in writing through the DCPs of the district concerned under advice to PHQ. Steps shall simultaneously be taken to stop further encroachments. Prompt cognizance in such matters shall be taken on receipt of such complaints from the designated officials of MCD for appropriate legal action under the provisions of the Act. It has been specifically mentioned that a large number of vegetable vendors and other hawkers use the main roads, footpaths etc. for display and sale of their goods. Such encroachment is clear violation of the provisions contained in Section 83(d) and (e) of the Act.

20. As per Circular No.26/2010, the police was directed to ensure that no encroachment of pathways by shopkeepers either through extending their shops or parking the vehicles be permitted. The circular also directs that the

responsibility of local enforcing officials including police may be fixed and action be initiated in the eventuality of default. Likewise, Circular No.27/2007 casts a duty on SHOs and other field staff to prevent/remove the encroachments and to maintain law and order in their respective areas.

21. A plain and meaningful reading of the provisions/scheme of the Act reveals that under the standing orders and circulars, it was mandatory for the SHO and local police to take effective steps to prevent/remove encroachments from street/public places and to take effective appropriate legal action to prosecute the violators and offenders.

22. Therefore, mere registration of Calendera (Kalandra) under the Act and IPC without any other further steps to prosecute the violators, and drawing yellow strip along with tehbazaris, removing the iron stands, strengthening the public address system etc. projected in their respective replies by the applicants, appear to be a mere eye-wash and speculative. Such lame excuses cannot possibly be termed as effective steps taken under the Act, bye-laws and circulars in order to maintain law and order in their respective areas as urged on behalf of the applicants.

23. On the contrary, the arguments of the learned counsel for respondents that Delhi being the capital of India, is a sensitive area and since Sarojini Nagar & Saket markets

are, in fact, thickly populated areas, and prone to terrorist attacks, so the SHOs are required to be more vigilant to maintain law and order and to remove encroachments in their respective areas, have considerable force. In fact, the applicants were required to be more vigilant. They were required to prosecute the violators, in which they have utterly failed despite specific directions and guidelines issued by their superior officers.

24. It is proved from the records that during the course of inspection by the senior police officers, raised platforms for Tehbazari, huge encroachments in the market were found which were clearly attributable to inaction on the part of the applicants. The explanations put forth by the applicants are far from truth, speculative and inadequate. Thus, if the legal provision, facts and materials as discussed hereinabove, are put and perused together, then the conclusion is inescapable and irresistible that applicants have miserably failed to act promptly to remove and prevent the encroachments, and thus have failed in the discharge of their official duties. The Disciplinary as well as Appellate Authorities 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. As such, no interference is warranted by this Tribunal.

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

26. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and instant OAs deserve to be and are hereby dismissed as such in the obtaining circumstance of the cases. No costs.

Let a copy of this order be placed in all the connected files.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh