

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

O.A No.100/2000/2015

New Delhi this the 2nd day of November, 2016

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

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

S. Petchi Muthu

(Retired Sub-Inspector, Delhi Police)

S/o Shri P. Sankaralingam

Quarter No.1948 Laxmi Bai Nagar,

New Delhi-110023.

..Applicant

(Argued by:Ms. Shashi Panwar for Shri C. Rajaram, Advocate)

Versus

1. Govt. of NCTD,
Through Commissioner of Police,
Delhi Police Head Quarters,
MSO Building, I.P.Estate,
New Delhi-110002.
2. Joint Commissioner of Police,
Delhi Police, Rashtrapati Bhawan,
New Delhi-110001.
3. Deputy Commissioner of Police,
Delhi Police, Rashtrapati Bhawan,
New Delhi-110001. Respondents

(By Advocate: Ms. Sumedha Sharama)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The compectus of the facts and material, culminating in the commencement, relevant for disposal of the instant Original Application (OA), and exposted from the record is that applicant, S. Petchi Muthu, SI (since retired), was deployed at Gate No.11 at Rashtrapati Bhawan on

29.07.2013 on security duty, along with SI Nawal Singh, SI Sukru Oran, SI Yatendra Kumar and HC Krishan Kumar. They allowed one intruder to enter in the prohibited premises of Rashtrapati Bhawan, without any verification. Thus, they were stated to have committed misconduct in discharge of their official duties.

2. As a consequence thereof, Departmental Enquiry (DE), was initiated against the applicant and his other co-accused and Enquiry Officer (EO) was appointed under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"), vide impugned order dated 02.08.2013 (Annexure A-2) by the competent authority.

3. After following the due procedure of enquiry, the following summary of allegations were served upon the applicant and his other co-accused:-

"I, Mehar Chand, ACP/HQ/Enquiry Officer/RB hereby charge you SI Sukru Oraon, No.D/2684 (PIS No.28790279), SI Nawal Singh, No.2013/D (PIS No.28770377), SI S.P. Muthu, No.D/3314 (PIS No.28740659), SI Yatender Kumar, No.4465/D (PIS No.28780730) and HC Krishan Kumar, No. 915/RB (PIS No.28891328) that as per enquiry report dated 30.07.2013 submitted by Shri P.S. Themreikan, ACP/Function on 29.07.2013 at about 1115 hrs., SI Rajkumar of ITBP, detailed for duty at Gate No.31, R.P. Bhawan issued a temporary pass bearing No.26 to one person namely Devender Kumar to meet 'General Secretary office' in R.P. Bhawan. It was the duty of you SI Sukru Oraon, No.D/2684 detailed for duty at Gate No.31 from 0800 hrs. to 1600 to check whether the pass issued is correct or not as the post of 'General Secretary' is not exist in President Secretariat. You failed to detect the same and allowed intruder to enter into President Estate from your duty point unauthorisedly. Thereafter, SI Nawal Singh, No.2013/D detailed for duty at Gate No.36 from 0800 hrs. to 1600 hrs. have also allowed the entry of intruder from your duty point without proper verification. Subsequently, intruder reached at Gate No.11 and also managed to pass through the gate. You SI S.P. Muthu, No.D/3314 detailed for duty at Gate No.11 from 0800 hrs to 1600 hrs. have allowed him to enter from your duty point even though you were informed by the intruder that he want to go to Secretary's Office, you let it though fully aware that he was not eligible. You believed in the

words of the intruder that he will go to reception for taking photo pass, which highly speaks of your lackadaisical approach towards your official duty. Thereafter, the intruder reached at President Secretariat from A-67. From the CCTV footage of A-67, it has been revealed that you HC Krishan Kumar No.915/RB detailed for duty from 0800 hrs. to 1600 hrs. remained present at your point of duty but without doing your duty. Only those people are allowed to enter from this gate who have valid passes issued by the office of DCP/RB and that too after proper checking and frisking but you HC Krishan Kumar were found laid back sitting in your chair without even bothering to ask any of the entrant for the ID card or for checking. You even denied first time when it was asked whether the person had taken entry from your point of duty. You admitted your mistake only after watching the CCTV footage. Moreover, you even hushed the person away as soon as possible from R.P. Bhawan to avoid enquiry by senior officials. You also took the possession of the intruder from Const. Naresh Kumar, No.194/RB stating that you will bring the person yourself, which clearly shows your mala fide intention in hushing away the matter after being caught negligent towards your duty. Later when SO to DCP/RB informed about the incident to you SI Yatender Kumar, No.4465/D, DO/Reception/RB detailed for duty from 0800 hrs. to 1600 hrs. to trace the person and detain him for further enquiry but you SI Yatender Kumar, No.4465/D failed to do so. You also didn't inform the senior officers who could have intervened in the matter and dealt it properly".

4. Thereafter, the EO recorded & evaluated the evidence of the parties, and came to a definite conclusion, that the charges framed against the applicant and his other co-accused duly stand proved beyond any shadow of doubt, vide enquiry report dated 10.10.2013 conveyed to the applicant by memo dated 14.10.2013 (Annexure A-3).

5. Having completed all the codal formalities and agreeing with the findings of the EO, a penalty of forfeiture of one year approved service temporarily for a period of six months entailing reduction in his pay from Rs.14950/- + Rs.4200 (GP) to Rs.14390/- + Rs.4200 (GP), was imposed on the applicant, whereas a penalty of forfeiture of one year approved service permanently was imposed on all the co-delinquents entailing reduction in their pay accordingly, vide

impugned order dated 30.10.2013 (Annexure A-4) passed by the Disciplinary Authority (DA).

6. Thereafter, on appeals, filed by the co-delinquents of the applicant, the penalty imposed by the DA was reduced to that of Censure, vide order dated 28.01.2014 (Annexure A-5 Colly) by the Appellate Authority (AA). In case of appeal filed by SI Sukru Oraon, similar orders were passed as in the case of appeals filed by other co-delinquents, whereas the appeal (Annexure A-5) filed by the applicant was dismissed as time barred by the AA, by means of very brief impugned order dated 05.02.2014 (Annexure A-1).

7. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders of the DA & AA, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds:-

(i) That the impugned order dated 05.02.2014 passed by Respondent No.2 rejecting the appeal of the Applicant on the grounds of the limitation is illegal, not tenable in law and discriminatory.

(ii) That the appellate authority/Respondent No.2 ought to have gone into the merits of the appeal before dismissing the appeal.

(iii) That the Respondents have discriminated the applicant by sustaining the punishment vis-à-vis SI Nawal Singh, SI Yatender Kumar, SI Sikru Oraon and HC Krishan Kumar, who punishments were modified to "Censure" thus the impugned order is mala fide, arbitrary and unconstitutional being violative of Articles 14, 16 and 21 of the Constitution of India.

(iv) That the Respondents ought to have appreciated the fact that the applicant and his daughter was not well and this resulted in delay in filing of appeal.

(v) That the Respondents ought to have appreciated the advice of the Deputy Commissioner of Police, DE Cell dated 17.07.2014 to consider the case of the applicant and treat the case of the applicant at par with 4 other officers whose punishments were reduced to censure/warning.

(vi) That the Respondents have failed to appreciate the principles stated by the Hon'ble Supreme Court of India in **Anand Regional Co-op Oil Seedsgrower's Union Limited vs. Shaileshkumar Harshadbhai Shah**

(2006) 6 SCC 548 and **Director General of Police and others vs. G. Dasayan** (1998) 2 SCC 407.

(vii) That 'Doctrine of Equality' applies to all who are equally placed even among persons who are found guilty.

(viii) That the Respondents have imposed different punishments i.e., set aside the punishment imposed on SI Nawal Singh, SI Yatender Kumar, SI Sikru Oraon and HC Krishan Kumar and upheld the punishment passed by Respondent No.3 qua the applicant herein. It would be not out of place to mention that all were involved in the same incident, thus parity among co-delinquents has to be maintained when any punishment is imposed".

8. On the strength of the aforesaid grounds, the applicant seeks quashment of impugned orders in the manner indicated hereinabove.

9. The respondents refuted the claim of the applicant and filed their reply, wherein, it was, inter alia, pleaded that a joint DE was initiated against the applicant and his co-delinquents. The EO conducted the proceedings as per D.P. Rules and submitted his report dated 10.10.2013, concluding therein that the charges levelled against all the Delinquent Officials were fully proved beyond any shadow of doubt. The copy of the report of the findings of the EO was delivered to them. In pursuance thereof, they submitted their respective written representations. They were also heard in Orderly Room on 29.10.2013.

10. However, the DA, after going through oral/written submission and the relevant documents available on DE file, rightly imposed the above mentioned punishment on the Charged Official (CO). At the same time, it was categorically admitted, that on appeals filed by SI Sukru Oraon, SI Nawal

Singh, SI Yetender Kumar and HC Krishan Kumar, the punishment was reduced to that of Censure by the AA.

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

12. Controverting the pleadings 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. At the very outset, it will not be out of place to mention here, that although the applicant has pleaded various pointed grounds, but during the course of argument, learned counsel for the applicant has only urged that the applicant is also entitled to the same treatment on the basis of principle of parity and his penalty is liable to be reduced to that of Censure, as has been done in the case of his similarly situated co-delinquents. The learned counsel for the respondents has fairly acknowledged the factual matrix.

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

15. As is evident from the record, that a joint DE was initiated against the applicant and his similarly situated co-delinquents, namely, SI Nawal Singh, SI Sukru Oran, SI Yatendra Kumar and HC Krishan Kumar, for the same very misconduct/charge. The EO found all of them guilty for dereliction of duty and concluded, that the charges served against them were duly proved. Not only that, the DA has passed the common impugned order of punishment against all the CO. Admittedly, in pursuance of appeal, the penalty imposed on co-delinquent of the applicant SI Sukru Oraon by the DA, was reduced to that of Censure by the AA (Annexure A-5 Colly). Similar orders were passed on the respective appeals of other co-delinquents by the AA, whereas the appeal (Annexure A-5) filed by the applicant was rejected, being time barred, vide very brief, sketchy and non-speaking impugned order dated 05.02.2014 (Annexure A-1) in a very casual manner. The AA has not at all dealt with the grounds of condonation of delay in the right perspective and did not assign any reasons, much less cogent, to negate the claim/grounds of condonation of delay of the applicant.

16. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240*** has in para 8 held as under:-

“8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of *S.N.Mukherjee vs. Union of India* reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. **Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation**”.

17. An identical question came to be decided by Hon’ble Apex Court in a celebrated judgment in the case of *M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others* 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that **“recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim.** If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons, the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just”. It was also held that “while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must

appear that he has reached a conclusion which is according to law and 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 order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.***

18. Moreover, in the instant case, the AA was required to pass reasoned and speaking order, as contemplated under Rule 25(2) of D.P. Rules, which is totally lacking in the present case. Thus passing one line order, that appeal is rejected by the AA, is not legally permissible. The impugned order of the AA dated 05.02.2014 (Annexure A-1) thus is illegal, deserves to be and is hereby set aside.

19. This is not the end of the matter. Concededly, as mentioned above, applicant and his other indicated co-delinquents were jointly charge-sheeted for the same very misconduct and a joint DE was initiated against them by the DA. Even the DA has passed a common punishment order dated 30.10.2013 (Annexure A-4), whereby the punishment of forfeiture of approved service was awarded to other co-delinquents and taking into consideration the fact of retirement of the applicant, a lenient view was taken and a penalty of forfeiture of temporary service for a period of six months was imposed on him (applicant). It is not a matter of

dispute, rather specifically admitted in the reply of the respondents, that in the wake of respective appeals, the penalty of forfeiture of one year service imposed on the similarly situated co-delinquents by the DA, was reduced to a penalty of Censure, vide order dated 28.01.2014 (Annexure A-5 Colly) by the AA. Thus applicant (since retired), is also entitled to the same treatment and parity with the cases of his other similarly situated co-delinquents under the same set of circumstances, as envisaged under Articles 14 & 16 of the Constitution of India. This matter is no more res integra and is now well settled.

20. An identical point came to be decided by the Hon'ble Apex Court in the case of ***Man Singh Vs. State of Haryana and Others AIR 2008 SC 2481***, while considering the scope of Article 14 of the Constitution and it was ruled that the concept of equality, as enshrined in Article 14 of the Constitution of India, embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. **Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted**

methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

21. Again, the Hon'ble Supreme Court in the case of ***Rajendra Yadav Vs. State of M.P. and Others JT 2013 (2) SC 627*** has held that the Doctrine of Equality applies to all, who are equally placed even among persons who are found guilty. The persons who have been found guilty, can also claim equality of treatment, if they can establish discrimination with them relatable to similarly situated persons.

22. In this manner, the protection of Article 14 & 16 of the Constitution of India and principles of equality, parity and *stare decisis* are fully attracted to the case of the applicant as well. He is also entitled to equal treatment in the same terms as has been done in the case of his similarly situated co-delinquents by the competent authority in the obtaining circumstances of the case. Hence, the impugned orders of the DA and AA are arbitrary and cannot legally be sustained as such in the eyes of law.

23. Therefore, the impugned order of the DA dated 30.10.2013 (Annexure A-4) deserves to be and is hereby modified to the extent of reducing the penalty of forfeiture of service imposed on the applicant to the extent of imposing a penalty of Censure, as has been done in the cases of his other

co-delinquents by the AA, on the principle of equal treatment and parity.

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

25. In the light of the aforesaid reasons, the impugned order dated 05.02.2014 (Annexure A-1) of the AA is set aside and the impugned order dated 30.10.2013 (Annexure A-4) imposing penalty on the applicant by the DA is modified to the extent and in the manner indicated hereinabove, with all consequential benefits. The OA is accordingly partly accepted. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
02.11.2016

Rakesh