

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3519/2012

New Delhi this the 7th March, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Tej Ram Meena, Age 41
S/o Late Shri Johari Lal Meena
R/o E-31, 2nd Floor, Lajpat Nagar,
Sahibabad, Ghaziabad, UP.

...Applicant

By Advocate: Shri Sachin Chauhan.

Versus

<p>1. Government of NCTD through the Commissioner of Police, PHQ, I.P. Estate, New Delhi,</p>	<p>...Respondents</p>
<p>2. The Additional Commissioner of Police, Principal, PTC, Jharoda Kalan, New Delhi.</p>	

By Advocate: Ms. Alka Sharma.

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant Original Application (OA) and emanating from the record is that applicant, T.R. Meena was working as a Sub Inspector in Delhi Police, whereas Pramod Kumar (co-delinquent) was working as Inspector, SHO of Police Station, Mahipal Pur on 14.02.2008. A telephonic call was received from Safdarjung Hospital that one Bahadur Alam S/o Abdul, aged 34 years was brought dead vide MLC No.24813/08. In pursuance of the information, DD No.45 dated 14.02.2008 was recorded at Police Station Mahipal Pur. The enquiry was entrusted to applicant. Having rushed to the hospital, collected the MLC, prepared the inquest proceeding, recorded the statement of acquaintances of deceased, he also inspected the site and completed all the formalities. He informed SHO, Mahipal Pur about the whole incident. The matter was brought in the knowledge of SHO, Police Station, Mahipal Pur by Head Constable Gurinder Singh No.14-A verbally. On 15.02.2008, applicant got the post mortem done and handed over the dead body to his relative and mentioned in the DD No.32 dated 15.02.2008 of Police Station, Mahipal Pur as a suspicious case.

2. Later on, it revealed that the place of occurrence falls within the jurisdiction of Police Station Indira Gandhi International Airport (for short IGI Airport) and not within the jurisdiction of Police Station, Mahipal Pur. The applicant and Inspector Pramod Kumar were stated to have acted in the matter which did not fall in their jurisdiction of Mahipal Pur Police Station. Consequently, after conclusion of disciplinary proceedings, a penalty of "Censure" was awarded to Inspector Pramod Kumar whereas "a penalty of withholding of next increment for a period of one year without cumulative effect was awarded to applicant, T.R. Meena", vide impugned order dated 26.12.2011 (Annexure A-1). The appeals filed by them were dismissed as well, vide impugned order dated 09.08.2012 (Annexure A-2) by the Appellate Authority.

3. Aggrieved thereby, applicant has preferred the instant OA, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 to quash the impugned orders dated 26.12.2011 (Annexure A-1) and dated 09.08.2012 (Annexure A-2). The case set up by the applicant, in brief, insofar as relevant, is that the Enquiry Officer (for brevity EO) has based his finding on speculative ground, mere suspicion, in violation of Rules 6 and 9 of the Delhi Police (Punishment and Appeal) Rules, 1980 [hereinafter referred to as "relevant rules"] and just ignored the defence evidence brought on record by the applicant. It was alleged that the entire enquiry proceedings are vitiated as summary of allegation and charge levelled against the applicant are vague in nature and does not level any specific allegation of misconduct. According to the applicant, he has taken all the necessary/legal steps and made entries in the relevant record of Police Station in this regard after receipt of telephonic call from Sajdarjung Hospital.

4. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claimed that the entire disciplinary proceedings are bad in law, arbitrary and illegal. The authorities have just ignored the defence evidence on record which have caused a great prejudice to his case. On the basis of the aforesaid grounds, the applicant sought to quash the impugned orders (Annexure A-1) and (Annexure A-2) as illegal and without jurisdiction in the manner indicated hereinabove.

5. Likewise, the respondents contested the claim of the applicant, filed the reply, inter alia, pleading that the EO, punishing and appellate authorities have followed the due procedure of enquiry under the relevant rules. According to the respondents, since the applicant and his co-delinquent have dealt with a case, which did not fall within their jurisdiction, i.e., Police Station, Mahipal Pur, but, in fact, the occurrence had taken place within the jurisdiction of IGI Airport, therefore, their action amounts to grave misconduct, negligence and dereliction in the discharge of his official duty, which renders them liable to be dealt with departmentally under

the provisions of the relevant rules. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

6. Controverting the allegations in the reply of the respondents and reiterating the pleadings contained in the main OA, the applicant has filed the rejoinder.

7. 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, to our mind, the instant OA deserves to be accepted for the reasons mentioned herein below.

8. The bare perusal of the record would reveal that the applicant was charge sheeted for his pointed misconduct in the following terms:-

"It is alleged that Insp. Pramod Kumar No. F-I/96 (PIS No. 288200Q3) and SI T. R. Meena No. D-2103 (PIS No. 16960132) that on 14.2.08 at 8.50 PM a call was received from Safdarjung Hospital over telephone that one Bahadur Alam S/o. Abdul aged 34 years has been admitted as Brought Dead vide MLC No. 24813/08. The information was recorded vide DD No. 45 dated 14.2.08 at PS Mahipal Pur and was entrusted to SI T.R. Meena No. D-2103 for enquiry. After receiving the DD entry, the SI went to the hospital, collected MLC of the deceased and recorded the statements of his acquaintances. The SI visited the place of occurrence, inspected the site, and prepared the inquest proceedings without any direction of SHO. After preparing the inquest proceedings he informed SHO/Mahipal Pur about the whole incident. The matter was also brought in the knowledge of SHO/PS Mahipal Pur by HC/DO Gurinder Singh No. 14-A verbally.

On 15.2.08 SI T. R. Meena No. D-2103 got conducted the post mortem and handed over the body to his relative. He has also mentioned in DD No. 32 dated 15.2.08 PS Mahipal Pur that the circumstances are suspicious/not clear.

In the evening of 15.2.08 the DCP/IGIA, ACP/Palam, SHO/Mahipal Pur, SHO/IGI Airport and SI Amrit Raj of PS IGI Airport visited/inspected the place of occurrence. There SHO/IGIA apprised that the place of occurrence clearly falls in the jurisdiction of PS IGIA and not PS Mahipal Pur. The call therefore should have been dealt with by IO from PS IGI Airport. After analyzing the situation SHO PS IGI Airport was directed to preserve the site at once by properly demarcating it and also stationing an armed police party till the same is inspected by crime team and CFSL experts. He was further directed to register a criminal case under the relevant section of law. Accordingly as case FIR No. 65/08 u/s 304 A IPC dated 15.2.08 was registered at PS IGIA and investigation handed over to SI Amrit Raj.

SHO/PS Mahipal Pur Insp. Pramod Kumar No. D-I/96(PIS No. 28820003) and SI T. R. Meena D-2103 (PIS No. 16960132) have not complied the necessary requirements and have taken this case/incident in a very casual manner due to which the investigation of the case can be adversely affected.

It is further alleged that SI T. R. Meena No. D/2103 was well acquainted with the jurisdiction of both the police stations and had remained posted at PS IGIA twice i.e., from 2.9.05 to 29.1.06 and 17.1.01 to 28.8.07 even then he dealt with call although he had full knowledge that the place of occurrence falls in the jurisdiction of PS IGIA not PS Mahipal Pur. If he had any doubt he should have sorted out the matter with SHO/IGIA which he did not bother to do for the reason best known to him. Although a serious incident occurred and a precious life was lost. SHO/Mahipal Pur Insp. Pramod Kumar No. D- I/96 neither visited the

spot nor informed ACP Palam immediately but informed him late in the morning on 15.2.08. However, he failed to supervise the working of subordinate staff and also did not visit the place of occurrence.

The above act on the part of Inspt. Pramod Kumar No. D-I/96 (PIS No. 28820003) and SI T. R. Meena No. D-2103 (PIS No. 16960132) amounts to grave misconduct, negligence and dereliction in the discharge of their official duties assigned to them, which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

9. What is “misconduct” has been explained by the Hon’ble Apex Court in a celebrated judgment, which is being followed in later judgments, in case of ***Union of India and Others Vs. J. Ahmed 1979 (2) SCC 286*** and ***Inspector Prem Chand Vs. Government of NCT of Delhi and Others 2007 (4) SCC 566***.

10. Having considered the matter, it was ruled that deficiencies in personal character or personal ability would not constitute misconduct for taking disciplinary proceedings. Negligence in performance of duty or inefficiency in discharge of duty are not acts of “commission or omission” under the relevant rules. Even error of judgment or negligence simpliciter would not constitute misconduct warranting the disciplinary proceeding against an employee. Misconduct has to have some element of delinquency, may be, even gross negligence. It is only when the allegations subject matter of charge may tantamount to misconduct that a person can be proceeded for inflicting any of the punishments prescribed in the rules. Non-performance of duties, which may have no element of unlawful behaviour, wilful in character, improper or wrong behaviour, misdemeanour, misdeed, impropriety or a forbidden act, may sometime amount to not carrying out the duties efficiently, but the same cannot be construed to be misconduct warranting disciplinary proceedings against an employee.

11. Such thus being the legal position and material on record, now the short and significant question, though important, that arises for determination in this case is, as to whether the act alleged against the applicant amount to grave misconduct rendering him liable for disciplinary proceedings or not? Having regard to the rival contention of the learned counsel for the parties, to our mind, the answer must obviously be in the negative.

12. As is evident from the record that in the wake of telephonic message received by Inspector Pramod Kumar, co-delinquent of the applicant, DD No.45 dated 14.02.2008 was recorded at Police Station, Mahipal Pur that one Bahadur Alam S/o Abdul, aged 34 years was brought dead. The enquiry/investigation was entrusted/assigned to the applicant. He immediately rushed to hospital, collected MLC of the deceased, prepared the inquest report and recorded the statements of his acquaintances. Thereafter, he visited the place of occurrence

and completed the requisite formalities. He also inspected the site. After that he informed SHO Mahipal Pur about the whole incident. The matter was also brought in the knowledge of SHO, Police Station, Mahipal Pur by Head Constable Gurinder Singh verbally on the same date.

13. Not only that, on 15.02.2008, applicant got conducted the post mortem, received the copy, handed over the body to his relative and informed his superior through the memo of DD No.32 dated 15.02.2008 of Police Station Mahipal Pur that the circumstances of the case were suspicious/not clear. That means, he in pursuance of orders of his superior, conducted investigation in the matter and bona fide complyed the direction of his superior. It was only in the evening of same very day, i.e., 15.02.2008, it revealed that the incident had taken place within the jurisdiction of Police Station, IGI Airport and not within the jurisdiction of Police Station, Mahipal Pur. Thereafter, things were turned around against the applicant. Before that, nobody has blamed the applicant. Moreover, it is not the case of the department that the applicant has not acted promptly or has omitted to do something which he was required to do or he has tampered with any evidence for extraneous consideration. In the absence of such imputation, it cannot possibly be saith that applicant has committed any misconduct.

14. Meaning thereby, it stands proved on the record that the applicant has acted prudently in the matter. As soon as SHO, Police Station, Mahipal Pur received the telephonic call from Safdarjung Hospital, enquiry was assigned to the applicant. The applicant in pursuance of the order of superior, immediately rushed to the hospital, collected the MLC, recorded the statements of his acquaintances of the deceased, prepared the inquest report, inspected the site and reported the matter to the SHO, Police Station, Mahipal Pur vide DD No. 45 dated 14.02.2008 of the same date. Sequelly, on the next date, i.e., 15.02.2008, he got conducted the post mortem, collected report, completed all the formalities and handed over the dead body to the relatives. By that time, neither the relatives of the deceased nor anybody else including police officers raised any accusing finger towards the applicant.

15. Ex-facie, the argument of the learned counsel that if the allegations contained in the charge sheet are believed to be true, as such, even then, no misconduct is attributable to the applicant, has considerable force. Not only that even the learned counsel for the respondents did not point out any circumstances as to how, when and in what manner, the act of the applicant amounts to grave misconduct resulting in initiation of disciplinary proceedings. To our mind, on the contrary, if the applicant had not acted promptly in the manner indicated hereinabove, he would have been held guilty for more serious charge of dereliction of his duty in a case of death of a person by the respondents.

16. As illogical as it may look, but strictly speaking, tendency and frequency of the authorities to initiate disciplinary proceedings against the delinquent officials, without any substance, in a very casual manner, have been tremendously increasing day by day creating a fear in their minds that even if they perform their duties diligently, the possibility of initiating disciplinary action cannot be ruled out. It cannot possibly be denied that a negative and indecisive attitude is developing amongst the government officers/officials primarily for the reason that any decision taken which may be even in good faith in performance of their duty in a right earnest way may become such a matter of disciplinary action against them. Surely, if such officers are tried departmentally for their bona fide actions taken in discharge of their official duties, then indeed situation, as it prevails, is bound to aggravate in future.

17. Therefore, if the crux of pointed facts and circumstances emerging out from the record are put together and critically examined, then to our mind, conclusion is inescapable and irresistible that the charge levelled against the applicant does not constitute grave misconduct warranting the initiation of disciplinary proceedings against him. Thus, the disciplinary as well as appellate authorities have just ignored with impunity the indicated relevant factor to punish the applicant. Indeed, if the impugned orders are allowed to stand, then it will inculcate and perpetuate injustice to the case of the applicant, which is not legally permissible in the obtaining facts and circumstances of the case.

18. No other point, worth consideration, is urged or pressed by the learned counsel for the parties.

19. In the light of the aforesaid reasons, the instant OA is allowed. The impugned orders dated 26.12.2011 (Annexure A-1) of the Disciplinary Authority and dated 09.08.2012 (Annexure A-2) of the Appellate Authority are hereby set aside.

Needless to mention that the applicant will naturally be entitled to all the consequential benefits. However, there would be no costs.

(MS. NITA CHOWDHURY)
MEMBER (A)

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

Rakesh