

Central Administrative Tribunal
Principal Bench: New Delhi

**OA No. 3526/2013
MA No. 2687/2013**

Reserved on: 24.02.2016
Pronounced on: 26.02.2016

**Hon'ble Ms. Chameli Majumdar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Kishor Kumar
R/o F-21, Brahm Aptt.,
Plot No.7, Sec-7, Dwarka,
New Delhi – 110 075. ...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Versus

1. The Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi-02.
2. The Joint Commissioner of Police,
Southern Range,
New Delhi.
3. They Dy. Commissioner of Police,
South Distt.,
New Delhi. ...Respondents

(By Advocate: Ms. Sumedha Sharma)

O R D E R

By Ms. Chameli Majumdar, Member (J):

The applicant has filed this Original Application challenging the order dated 23.03.2011 passed by the disciplinary authority imposing on him the punishment of Censure. The applicant has also challenged the order dated 16.06.2011 passed by the appellate authority confirming the

penalty order of the disciplinary authority. The applicant has also filed an application for condonation of delay.

2. The facts of the case in short are, *inter alia*, as follows:-

- (a) An explanation notice dated 27.01.2011 was issued to the applicant asking for explanation as to why he did not remove the encroachment in front of shops and pavements on tehbazari in Sarojini Nagar Market;
- (b) The applicant submitted his reply pleading that the removal of encroachment from the market concerned was the prime duty of the land owning agency i.e. N.D.M.C. Moreover, one Inspector of NDMC with his staff always remained present in the market mainly for the purpose of removing illegal encroachment;
- (c) The applicant had joined as SHO, Sarojini Nagar on 15.09.2010 and since then various actions were taken by him to remove unauthorized encroachment from the market; 54 vehicles had been impounded; number of abandoned vehicles were deposited. As such, he followed all the instructions of the senior officers to remove illegal

encroachment and had taken adequate preventive action;

- (d) The written reply of the applicant was considered by the disciplinary authority being the Deputy Commissioner of Police but the same was found unsatisfactory. Hence, a Show Cause Notice dated 23.02.2011 was issued to the applicant proposing punishment of censure. The applicant was called upon to show cause as to why his conduct should not be censured for the above lapse;
- (e) The applicant submitted his reply wherein he again repeated his stand that it was the prime duty of the land owning authority i.e. N.D.M.C. and one Inspector of NDMC with his staff always remained present in the Sarojini Nagar Market mainly for the purpose to remove illegal encroachment. He also stated that on the alleged date, one SI, one ASI, two Head Constables and five Constables and QRT Team were also detailed for duty in Sarojini Nagar Market duly briefed to keep strict vigil on the vendors and to take adequate action in respect of illegal encroachment in the market. The applicant also prayed that he should be given an opportunity to appear before

the Deputy Commissioner of Police, South District, New Delhi being his disciplinary authority for personal hearing;

- (f) The disciplinary authority on total non-consideration of the contentions of the applicant passed an order dated 23.03.2011 imposing the punishment of censure on the applicant;
- (g) The applicant preferred an appeal against the aforesaid punishment of censure awarded to him by the disciplinary authority. In the appeal, the applicant had referred an Endorsement OSD (Public Grievance) to Hon'ble L.G., Delhi vide office order dated 27.04.2011 wherein it was stated that removal of encroachment was to be done by the land owning agency and on their request, police was required to provide necessary assistance. Hence, the applicant submitted that he should not be held responsible for not removing the encroachment and the punishment order might be recalled and revoked; and
- (h) The appellate authority passed its order dated 16.06.2011 holding that the appellate authority was not convinced with the pleas of the appellant.

It was further held that during the enquiry conducted by the vigilance it was established that rampant unauthorized encroachments in front of shops and pavements had taken place in Sarojini Nagar Market after Common Wealth Games and the appellant failed to remove the said encroachment. The appellant being SHO was responsible to maintain proper law and order in the area but he failed to do so which resulted in large scale unauthorized encroachments in Sarojini Nagar Market. It was further held that such large scale encroachments had also fraught with the risk of terrorism. The appellate authority further observed that the appellant also failed to take necessary preventive measures against such encroachers for which the punishment awarded to him by the disciplinary authority was proper, justified and was not an excessive punishment. Hence, the appeal of the applicant was rejected by the appellate authority.

3. The applicant in the instant Original Application has challenged the said order of the appellate authority mainly on the ground that in a similar situation the applicant was again subjected to disciplinary action but the said

disciplinary action was closed by the Commissioner vide order dated 19.06.2012. Thereafter, another show cause notice dated 22.06.2012 was issued by the disciplinary authority on the same allegation of not removing unauthorized encroachments from Sarojini Nagar Market area. The applicant submitted his reply again explaining that he was not at fault as he took all possible actions to remove encroachments from the concerned market area in terms of the Delhi Police Act. The disciplinary authority, while considering the contentions of the applicant, accepted his explanation and passed order dated 18.07.2012 holding that as a matter of fact it was a busy market and the support of other agencies was required for keeping the road free from encroachment. Therefore, it would not be justified to hold the applicant guilty as all the possible measures taken to prosecute the encroachers by the applicant were satisfactory. Hence, taking a lenient view, the show cause notice was vacated.

4. The applicant has contended that the disciplinary authority in the above mentioned case admitted the fact that the applicant could not be punished for the encroachment in the busy area of Sarojini Nagar market. It was further held by the disciplinary authority that since other agencies were required to keep the road free from encroachments, the

applicant could not be punished. In view of such clear findings of the disciplinary authority, any finding, which was contrary to such finding, arrived at by the disciplinary authority, may be, in earlier occasion in a similar situation and with selfsame allegation against the applicant cannot be held to be valid or proper. The applicant has prayed for interference of this Tribunal in setting aside the findings as well as order of both the disciplinary authority dated 23.02.2011 and that of appellate authority dated 16.06.2011.

5. Learned counsel for the respondents has submitted that on the complaint of one S.K. Mishra, Advocate, Saket Court Complex, New Delhi, a vigilance enquiry was conducted and a surprise check was also made on 07.01.2011 at about 4.00 p.m. It was noticed that there was a large scale of encroachment in front of shops and pavements and only 110 Teh Bazari licences had been issued by the NDMC whereas a large number of vendors were found encroaching upon the public land creating hindrance to the common people. On the basis of such complaint, a show cause notice was issued to the applicant, who submitted his reply. The disciplinary authority was not satisfied and imposed a minor penalty of censure upon the applicant. The learned counsel for the respondents further

submits that the instant Original Application is liable to be dismissed on the ground of limitation only since the applicant has challenged the orders passed in the year 2011 whereas the present OA has been filed in 2013.

6. We have heard the learned counsel for the parties and perused the documents.

7. It is true that the applicant did not approach this Tribunal after the punishment order was passed by the disciplinary authority and confirmed by the appellate authority in 2011.

8. We have gone through the application for condonation of delay. We find merit in the submission of the applicant that he came to know about the effect of the order of punishment of Censure in 2013 only when the same punishment of Censure affected promotion of similarly placed employees. The applicant felt aggrieved since his promotion for the post of ACP may be denied for the said punishment of Censure. As such, application for condonation of delay merits consideration and, hence, the same is allowed.

9. We also find that the grounds which have been taken by both the disciplinary and appellate authorities in imposing punishment and refusing to interfere with the said

punishment by the appellate authority have been held to be untenable in a similar situation by the disciplinary authority in his order dated 18.07.2012 while considering the reply of the applicant against the impugned show cause notice dated 22.06.2012.

10. The submission of the learned counsel for the applicant is that the disciplinary authority, while issuing the punishment order of Censure dated 23.03.2011, failed to take into consideration the contention of the applicant taken in his reply to the show cause notice that he had taken all possible measures to prosecute the encroachers. Learned counsel for the applicant further submits that both the authorities also failed to take into consideration the fact that the Sarojini Nagar market being a busy market and the land owning agencies were required to keep the road free from encroachment. As such, the applicant should not have been made a scapegoat to hold him guilty for such encroachment. He has further contended that the impugned punishment of censure was imposed upon the applicant only to deprive him from the promotional post of Assistant Commissioner of Police in Delhi Police. His contention was that even the allegation made in the show cause notice did not constitute a misconduct warranting punishment of censure. It appears that all the contentions of the applicant, which were taken

by him in his reply to the impugned show cause notice, are the same which he had taken in his reply to the subsequent show cause notice dated 22.06.2012 issued to him in a similar situation and on the selfsame allegation for not removing encroachment. Therefore, the impugned orders passed by the disciplinary authority as well as the appellate authority cannot be sustained in view of the clear findings of the disciplinary authority in a similar situation in a latter case that the applicant could not be held guilty for the same. As such, the impugned show cause notice as well as impugned orders dated 23.03.2011 passed by the disciplinary authority imposing the punishment of Censure and 16.06.2011 passed by the appellate authority confirming the penalty order of the disciplinary authority cannot be sustained and are liable to be set aside and quashed.

11. We find merit in the submission of the learned counsel for the applicant that for the same and similar offence of not being able to remove encroachment from the shops and pavements, the disciplinary authority cannot pass two different orders. The order passed by the disciplinary authority on a later date should prevail since we find that the disciplinary authority applied its mind in coming to the conclusion on consideration of the pleas of the applicant

that it would not be justified to hold him guilty for the encroachment since he had taken all possible measures to prosecute the encroachers. The impugned orders passed by the disciplinary authority as well as the appellate authority would reflect that though both the authorities recorded submission of the applicant in respect of his positive actions taken to maintain law and order in terms of the Delhi Police Act, but in the conclusion held that the applicant was responsible for not removing the encroachment and, as such, he could be punished. According to our considered opinion, the impugned orders suffer from infirmity of non-application of mind. Accordingly, the impugned show cause notice dated 23.02.2011, and the order dated 23.03.2011 passed by the disciplinary authority imposing punishment of Censure and the order dated 16.06.2011 passed by the appellate authority confirming the order of the disciplinary authority are set aside. The OA stands allowed with no order as to costs.

(K.N. Shrivastava)
Member (A)

/Ahuja/

(Chameli Majumdar)
Member (J)