

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2908/2012
MA No.2403/2012

Order Reserved on: 04.03.2016

Pronounced on:06.05.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Insp. Mukesh Kumar Tyagi,
Belt No.D/2785,
PIS no.28823356
S/o late Sh. Amar Singh Tyagi,
R/o 45, Village & PO Chattarpur,
New Delhi.

-Applicant

(By Advocate Shri Saurabh Ahuja)

-Versus-

1. GNCT of Delhi
Through Commissioner of Police,
Police Headquarters,
I.P. Estate, M.S.O. Building,
New Delhi.
2. Joint Commissioner of Police,
Southern Range,
Through Commissioner of Police,
PHQ, I.P. Estate,
MSO Building,
New Delhi.
3. Deputy Commissioner of Police,
West District,
Through Commissioner of Police,
PHQ, I.P. Estate,
M.S.O. Building,
New Delhi.

-Respondents

(By Advocate Shri Vijay Pandita)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for read as under:-

- “(a) To quash and set aside the impugned orders mentioned in Para 1 of the OA and
- (b) To accord the Applicant with all consequential benefits viz. Promotion, seniority, etc. And
- (c) To award cost in favour of the Applicant and against the respondent. And
- (d) Pass any further order which this Hon’ble Tribunal may deem fit, just equitable in the facts and circumstances of the case.”

2. The brief facts of this case are as under.

2.1 The applicant is an Inspector in the Delhi Police. At the relevant point of time he was posted as SHO of Mianwali Nagar. On 17.08.2010 the Deputy Commissioner of Police (DCP), West District, during the course of his patrolling, observed that several vendors have encroached upon the footpath forcing the pedestrians to walk on the road and thus increasing the chance of road accidents and obstruction to the smooth flow of the traffic. Even the size of the stalls in the weekly market were found to be of the size more than the prescribed size under Tehbazari. Consequently, he issued the Annexure A-1 Show Cause

Notice (SCN) to the applicant as to why his conduct should not be censured for his failure to prevent the encroachments. In the said SCN broadly three charges have been levied on the applicant and his beat staff:

i) Beat staff and the SHO have failed to review the unauthorized mobile reharis nearby liquor vends encouraging drinking in public places. No CCTV cameras, as required by the order promulgated under Section 144 Cr. PC, have been installed.

(ii) The SHO and beat staff could not give any satisfactory answer for not informing the liquor vends about the order under Section 144 Cr. PC issued in this regard.

(iii) The vendors have encroached upon the footpath forcing the pedestrians to walk on the road and thus increasing the chances of road accidents and obstruction to the smooth flow the traffic.

2.2 The applicant replied to the Annexure A-1 SCN. Not satisfied with the reply, the DCP, who is also the Disciplinary Authority (DA) for the applicant, vide Annexure A-2 order dated 03.03.2011 censured the conduct of the applicant and two of his beat constables.

2.3 The applicant went in appeal before the departmental Appellate Authority (AA), viz. Joint Commissioner of Police, who vide his impugned Annexure A-3 order dated 27.04.2011 rejected the appeal.

2.4 Aggrieved by the impugned Annexure A-1 SCN and Annexure A-2 punishment order of the Disciplinary Authority and Annexure A-3 order of the Appellate Authority rejecting his appeal, the applicant has filed the instant OA.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. With the completion of the pleadings, the case was taken up for final hearing on 04.03.2016. Shri Saurabh Ahuja, learned counsel for the applicant and Shri Vijay Pandita, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that the basic duty of regulating the weekly bazaar is that of MCD and police only assist the MCD in the matter. He said that the DCP (respondent no.3) had issued order under Section 141 Cr. PC on 13.07.2010 (Annexure A-6) in which certain compliance was called for from the owners of liquor vends, which, *inter alia*, included installation and operationalisation of CCTV system within 45 days of the

issue of the order. He said that even before the expiry of the prescribed 45 days, Annexure A-1 SCN has been issued to the applicant for not getting the CCTV system installed and operationalised in the Peera Garhi Chowk area and as such this charge is *ab initio* pre-mature. He further submitted that by no stretch of imagination, any misconduct can be attributed to the applicant for the alleged offence ascribed in the SCN. He stated that the Hon'ble Apex Court in catena of judgments has held that "misconduct means, misconduct arising from ill motive. Acts of negligence, errors of judgment or innocent misconduct do not constitute misconduct." The learned counsel said that at the most the applicant could be accused of a bit of negligence but certainly he cannot be accused of any misconduct. The learned counsel also drew our attention to the observation made by the AA in his order stating that such rehris could not have come near the liquor shops without the knowledge and connivance of the police station staff. But no direct charge has been made against the applicant as such. Concluding his arguments, the learned counsel prayed for allowing the prayers made in the OA.

5. Per contra, learned counsel for the respondents stated that the OA is time barred since it has not been filed

within the prescribed limit of one year in terms of Section 21 of the Administrative Tribunals Act, 1985. Elaborating further, he said that the AA order is dated 27.04.2011 whereas the OA has been filed on 28.05.2013. In this connection, the learned counsel also drew our attention to the judgments of the Hon'ble Supreme Court in the following cases:

- i) **State of Punjab v. Gurdev Singh**, [(1991) 1 SCC 1].
- ii) **Union of India v. Ratan Chandra Samanta**, [JT 1993 (3) SC 418].
- iii) **Harish Uppal v. Union of India**, [(1994) 3 SCC 126].

6. Arguing the case on the merits, the learned counsel stated that from the SCN it is quite evident that on 17.08.2010, the DCP visited the Peera Garhi Chowk area and enquired from the liquor vends with regard to the Annexure A-6 order dated 13.07.2010 in which the requirement of installation of CCTV system and its operationalisation has been stipulated. From the enquiry with the liquor vends he came to know that the SHO and the beat staff had not even informed and sensitized the liquor vends about the Annexure A-6 order let alone getting it implemented. He further submitted that there are standing orders of the Delhi Police to all the police stations

with regard to their duties in preventing illegal encroachments on public places viz. footpath, roads but the applicant and his staff have taken no steps to prevent the encroachments nor have they taken action to regulate the size of stalls in the weekly markets as prescribed under Tehbazari by the MCD.

7. Concluding his arguments, the learned counsel submitted that the applicant has miserably failed in his duties and hence the punishment of **censure** inflicted on him by the DA, and duly confirmed by the AA, is fully justified and the OA may be dismissed being devoid of merit.

8. We have gone through the arguments of the learned counsel for the parties and have perused the pleadings and the documents attached thereto. Admittedly, the DCP, who is also the DA, vide his Annexure A-6 order dated 13.07.2010, issued under Section 144 Cr. PC, has prescribed certain regulations to be followed by the liquor vends. From the contents of the SCN, it is quite clear that the Mianwali Nagar police station headed by the applicant, had not even sensitized the liquor vends in its jurisdiction of the Annexure A-6 order let alone ensuring its implementation. We do not agree with the argument of the

learned counsel for the applicant that the impugned Annexure A-1 SCN has been issued to him even before the expiry of the prescribed 45 days period for the implementation of the Annexure A-6 order. Needless to mention that the order calls upon the concerned to install the CCTV system and ensure its operationalisation within 45 days. But the process for procurement of the equipments and their eventual installation has to begin much earlier. When the DCP visited the place on 17.08.2010, i.e., after 27 days of the issuance of the ibid order, he found that the liquor vends were completely unaware of the Annexure A-6 order. It is also quite evident from the records that a copy of the Annexure A-6 order has not been served on the liquor vends.

9. The inspection of the area by the DCP on 17.08.2010 also indicates that the local police has failed even to prevent encroachments of footpath. The existence of encroachments has not been denied by the applicant. We are not in agreement with the contention of the learned counsel for the applicant that it is the responsibility of the MCD to remove encroachments and that the local police is only to assist them. It is a farfetched argument. There are statutory orders of the Delhi Police casting duties on the local police officials for preventing the encroachment of

footpath and such other public spaces. We also hold that failure to discharge the duties on the part of the applicant cannot be called an error of judgment or innocent mistake or negligence. As SHO in-charge of the police station, he has to conduct himself in an upright manner so as to ensure maintenance of public order in his jurisdiction. If he has failed in doing so, as is evident from the inspection note of the DCP, we are of the view that the disciplinary action taken against him vide the impugned orders was fully justified.

10. In view of the foregoing, we do not find any merit in the OA. The OA is dismissed.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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