

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3764/2013

New Delhi this the 24th day of May, 2016

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

Inspector Brijesh Namboori
No. D/2985 (PIS No. 16900031)
4th Bn. DAP, Kingsway Camp,
New Delhi.

.....Applicant

(Argued by :Shri S.K. Gupta, Advocate)

Versus

1. The Commissioner of Police
PHQ, MSO Building
ITO, I.P. Estate, New Delhi.
2. The Dy. Commissioner of Police
North East District
Delhi.
3. The Joint Commissioner of Police
South Eastern Range, Delhi.Respondents

(By Advocate:Ms. Sangeeta Tomar)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (O.A), filed by the applicant, Inspector Brijesh Namboori, is to the impugned show cause notice (SCN) dated 19.01.2011 (Annexure A-3) and order dated 10.03.2011 (Annexure A-2) whereby his conduct was censured by the Disciplinary Authority (DA). He has also assailed the impugned order dated 23.10.2012 (Annexure A-I), by virtue of which his

Appeal was dismissed as well by the Appellate Authority (AA).

2. The contour of the facts and material, culminating in the commencement, relevant for deciding the instant O.A., and emanating from the record, is that, the applicant was posted as Inspector Investigation at Police Station, Gokal Puri. The complainant, Shri K.G. Aggarwal gave his Bus (Tata 1510) to accused Mechanic Fiaz and Avdesh (Body Maker and Painter) for repairs. During the repair of his vehicle, they (accused) have changed/stolen the genuine spare parts of the Bus, causing him the loss of approximately of a sum of Rs.70,000/-. The complainant filed the complaint which was marked to SI Om Pal Singh for inquiry. But, he did not take appropriate action, in order to help the accused. Subsequently, FIR No. 32/2010 was registered on 28.06.2010 after a vigilance enquiry. Even he (IO) has not got the mechanical investigation of the vehicle. The inquiry in the matter was conducted by the ACP/PG Cell on the complaint of the complainant Shri K.G. Aggarwal. It was alleged that applicant, while working as Inspector, Investigation in Police Station Gokal Puri, has failed to supervise the work of IO Om Pal Singh, in delaying the matter of registration and investigation of the case. According to the department, it was a serious lapse on his part, during the course of his employment.

3. As a consequence thereof, the impugned SCN (Annexure A-3) was issued to the applicant, to which he filed reply dated 10.02.2011 (Annexure A-4). His reply was stated to be unsatisfactory and his conduct was Censured vide impugned order dated 10.03.2011 by the DA, which reads as under:-

“ A Show Cause Notice for Censure was issued to Inspr. Brijesh Namboori, No. D/2985 (PIS No.16900031) vide this office No. 974-75/HAP/NE (P-I) dated 19.01.2011 for his grave misconduct by ACP/P/G/ Cell on the complaint Sh. K. G. Aggarwal R/o. C-4/155, Yamuna Vihar, Delhi. During enquiry it revealed that complainant gave his vehicle TATA 1510 Bus to Sh. Faiyaz and Sh. Avdhesh, both are body maker and painter by profession. During repairing his vehicle, their intention became change and they stole the spare part of above approximately a sum of Rs.60-70 thousands. On the same incident a case FIR No. 32/10 was registered at P.S. G. Puri after a delay of considerable period and I.O. SI Om Pal Singh, No. D/1814 with connivance of accused person didn't take proper action. Besides this, he was got the mechanical Inspection done the vehicle well in time. It clearly shows that Inspr. Brijesh Namboori, No. D/2985, the then Inspr./Investigation/ Gokal Puri is failed to supervise the I.O. in above said case, which is serious lapse on his part.

The above act on the part of Inspr. Brijesh Namboori, No.D/2985, SHO/Karawal Nagar amounts to grave misconduct, negligence and failed to supervise/direct the staff, which is a serious lapse on his part.

The show cause notice for censure was served upon him. He has submitted his written reply in response to the show cause notice for censure. I have perused the reply submitted by Inspector Brijesh Namboori, D/2985 and heard in orderly room on 08.03.2011. He stated it was general complaint and (sic) was not in the knowledge. Therefore, the matter could not be paid due attention & case was registered late. I have carefully gone through the enquiry report of ACP/PG Cell and other evidences on record. It clearly point-out the negligence, dereliction of duty to the extent of connivance & abdication of responsibility in taking due action on the complaint of the complainant. Further, even mechanical inspection was not got conducted in time as a result of vital piece of evidence are also weaken. After this, there is no doubt to arrive at the conclusion of gross negligence, dereliction of duty and totally lack of supervision on the part of SHO P.S. Karawal Nagar Inspector Brijesh Namboori, No.D/2985. No amount of explanation could erase the gross misconduct on his part. The case was later on registered and charge sheet was filed shows that case was genuine. Hence Inspector has grossly failed in discharge of his duty. Therefore, show cause notice for censure issued to Inspector Brijesh Namboori is confirmed and his conduct is censured.

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

4. Sequelly, the appeal filed by the applicant (Annexure A-5), was dismissed as well vide impugned order dated 23.10.2012 (Annexure-A-1) by the AA.

5. Aggrieved thereby, the applicant has preferred the instant OA to challenge the impugned SCN and orders, invoking the provisions of Rule 19 of the Administrative Tribunals, 1985.

6. The case set-up by the applicant, in brief, insofar as relevant, is that complainant, Shri K.G. Aggarwal made a complaint to the SHO and he (SHO) had marked the same to SI Om Pal Singh (IO) for investigation. They did not take any action and considerably delayed the registration of the case vide FIR No.32/2010 in order to help the accused. Applicant did not have any role whatsoever, to play in the instant case as he was neither asked by the SHO nor complaint was made to him. Hence, the applicant cannot be held guilty for any lapse.

7. Sequelly, it was explained that, having found the SHO guilty of lapse, he was issued a warning by the DA whereas SI Om Pal Singh (IO) was asked for an explanation in this regard. On the other end, the applicant was inflicted with the penalty of Censure without any fault by the DA.

8. According to the applicant, he was just posted as Inspector investigation at the relevant time in Police Station, Gokal Puri. He had nothing to do with the complaint of the complainant Shri K.G. Aggarwal, which was given to the SHO. The SHO has assigned the investigation to SI Om Pal Singh (IO). It was SI, Om Pal Singh (IO), who has neither registered the FIR promptly nor got the vehicle mechanically examined. Although, all these facts were brought to the notice of the authorities, but neither the DA nor the AA has considered this aspect of the matter, while passing the impugned orders. As soon as he came to know about the lapse, he immediately directed the IO to, register the case and conduct the mechanical inspection of the vehicle. The impugned orders were termed to be illegal, non-speaking, result of non-application of mind, arbitrary and against the statutory rule & principles of natural justice.

9. Levelling a variety of allegations and narrating the sequence of events, in all, the applicant claimed that he was not at fault and his conduct was illegally Censured by the authorities by passing non-reasoned orders. On the basis of the aforesaid grounds, the applicant sought quashing of the impugned SCN and orders in the manner indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant and filed the reply, whereby it was pleaded that

after taking into consideration the lapse on the part of the applicant, a SCN was rightly issued to him. His reply was found to be not satisfactory and the DA has rightly Censured his conduct. The matter was again examined and his appeal was dismissed as well vide order dated 23.10.2012 (Annexure A-1) by the AA.

11. Virtually reiterating the validity of the SCN and impugned orders, it was pleaded that applicant was at fault and grossly failed to supervise the progress of the above mentioned case and he is guilty of dereliction in discharge of his official duty. It will not be out of place to mention here, that the respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

12. Having heard the learned counsel for the parties, having gone through the records with their valuable assistance and after considering the entire matter, we are of the firm view that the impugned orders cannot legally be sustained, for the reasons mentioned herein below.

13. As is evident from the record, that applicant was charged in a routine manner, for his failure to supervise the proceedings to be carried out by the investigating officer in the said case. No other specific allegations of any kind were attributed to him.

14. Admittedly, the applicant was not the SHO of the concerned Police Station at the relevant point of time. He was just posted as Inspector to investigate heinous offences.

The complainant made the complaint to, and SHO marked the same to SI Om Pal Singh (IO). Applicant has so specifically maintained in his ground of appeal (Annexure A-5).

15. Not only that, applicant has specifically pleaded in para 5A of the OA as under:-

“A. Because the complaint was made to then SHO and the SHO had marked the same complaint to IO SI Om Pal Singh. The IO SI Om Pal Singh and SHO did not take timely action due to which the FIR No.32/2010 could not get registration on time. The applicant did not have any role to play in the instant case as he was neither asked by the SHO nor was complaint made to him due to which the applicant cannot be held guilty for the said incident. It is further submitted that however the SHO was issued a warning by the disciplinary authorities in the instant matter and the IO was asked for an explanation. On the other hand, the applicant was inflicted a penalty of censure by the respondents without any fault. It was the SHO and IO who made the mistake in not registering the FIR in time but not the applicant in any manner. But the same fact was not decided nor was appreciated by the Disciplinary Authority while they were imposing a penalty of censure upon the applicant”.

16. The respondents in reply to para 5A, have admitted that the applicant was posted as Inspector Investigation. The then SHO (not the applicant) was also awarded a warning by the DA after considering his reply to the explanation. The misconduct/report of SI Om Pal Singh (IO) was sent to DCP, 1st Bn., DAP for taking disciplinary action against him.

17. Meaning thereby, it was the SHO of Police Station, Gokal Puri to supervise the investigation in the matter of registration of the FIR and investigation to be carried out by SI Om Pal Singh (IO) and applicant has no role to play in this relevant connection.

18. Moreover, it is not a matter of dispute that the SHO of the PS was the supervisory authority and was required to supervise the investigation of the indicated case. He failed to supervise, found guilty and warning was issued to him for the lapse on his part. Strangely enough, the applicant, who was not the incharge of the Police Station, was awarded a penalty of Censure by the DA. He was not supposed to supervise the indicated matter over and above the SHO, incharge of the PS Gokal Puri. Thus, the applicant has been punished without any fault and on speculative grounds by the DA & AA, which is not legally permissible.

19. There is yet another aspect of the matter which can be viewed entirely from a different angle. The stand of the applicant from the very beginning in his reply (Annexure A-4) is that the complaint of the complainant Shri K.G. Aggarwal was marked to SI Om Pal Singh (IO) for investigation by the SHO. He (IO) was defaulter. Not only that, he has also specifically mentioned in his grounds of appeal (Annexure A-5) and in para 5A of the OA that, at the relevant time, he was posted as Inspector Investigation. The said complaint was received by, and SHO PS, Gokal Puri entrusted the investigation to SI Om Pal Singh (IO). He was not at fault. Hence the defence projected by the applicant was neither considered by the DA nor the AA has examined this aspect of the matter in the right perspective. The DA has only mentioned that "Hence Inspector has grossly failed

in discharge of his duty. Therefore, show cause notice for censure issued to Inspector Brijesh Namboori is confirmed". The same very error was committed/repeated by the AA where it was observed "I have gone through the appeal preferred by the appellant and the other file records and found his contentions not convincing. Therefore, I do not find any reason to interfere with the order of the DA". Although AA is legally required to pass reasoned order, as contemplated under Rule 25(2) of D.P. Rules, but surprisingly enough, no such reasons, much less cogent have been depicted in the impugned orders.

20. Meaning thereby, the authorities have not discussed the matter by a process of reasoning and rejected the defence projected by the applicant in a very casual manner.

21. It is now well settled principle of law that any order that may visit an employee with civil consequences, has to be passed after due application of mind and by a process of reasoning rejecting the defence projected by the delinquent official.

22. What cannot possibly be disputed here is that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

"Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

23. 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 held as under (para 8):-

"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”.

24. 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.***

25. Therefore, the Disciplinary Authority and Appellate Authority were legally required to record the reasons in support of their decision in order to decide the real controversy by passing a speaking and reasoned order, which admittedly is totally lacking in the present case. Thus, the impugned orders are against the statutory rules and principles of natural justice are also violated. The impugned orders exhibit non-application of mind, lack validity, cannot legally be sustained and deserve to be quashed in the obtaining facts and special circumstances of the case.

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

27. In the light of the aforesaid reasons, the OA is allowed. The impugned SCN dated 19.01.2011 (Annexure A-3) and order dated 10.03.2011 (Annexure A-2) passed by the DA and order dated 23.10.2012 (Annexure A-1) passed by the AA are hereby quashed. No costs.

(V.N. GAUR)
MEMBER (A)

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

Rakesh