CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3769/2013

Reserved on : 19.11.2016
Pronounced on : 23.11.2016

HON'BLE MR. P.K. BASU, MEMBER (A)

Mahender Singh, D-I/794
Aged 55 years,
S/o Shri Amir Singh,
R/o Q.No.204, Police Colony,
Hauz Khas, Opp. IIT,
New Delhi. .. Applicant

(By Advocate : Shri Sachin Chauhan with Shri Rajesh Kumar)

Versus

1. Govt. of NCTD through:
Through the Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

2. The Joint Commissioner of Police,
Southern Range through
the Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

3. The Addl. Dy. Commissioner of Police,
South East District through
the Commissioner of Police,
PHQ, I.P. Estate, New Delhi. .. Respondents

(By Advocate : Mrs. Sangeeta Tomar)

ORDER

The applicant in this O.A. is aggrieved by the punishment of 'censure' awarded to him vide order dated 29.07.2010.

2. The allegation against the applicant was that while he was SHO at Ambedkar Nagar Police Station, during Diwali, an

inspection by the ACP, Vigilance and his team was conducted in his area and they found the following discrepancies:

(i) At Shop No.33, M.B. Road, Banjara Market, the Shopkeeper encroached the area at main M.B. Road, which caused traffic jam.

(ii) The owner of one shop at Madangir Main Road, opposite Durbal Nath Mandir encroached upon public place for the sale of crackers. The shopkeeper was neither having cracker license nor covered his shop by tin shade. Besides, there was no fire fighting equipments at the shop.

(iii) At Subzi Mandi Madangir, Delhi, found one shop in open and in congested area. This shop was not covered by tin shade and no water buckets or pots were found at the shop.

3. The Show Cause Notice dated 08.06.2010 charged the applicant as follows:

> "This overall reflects that Inspr. Mohinder Singh, No.D-I/794 being SHO/Ambedkar Nagar seems to be in connivance with illegal sellers of crackers and failed to comply with the provisions of S.O. No.75, which amounts to gross misconduct and dereliction in the discharge of his official duty."

4. The applicant gave his explanation dated 26.07.2010, but vide order dated 29.07.2010 he was awarded the punishment of

'censure'. The applicant filed his appeal before the Joint Commissioner of Police, who rejected his appeal vide order dated 07.12.2010. Aggrieved by this, the applicant filed this O.A. seeking the following relief:

> "(i) To quash and set aside the show cause notice dated 8.6.10 at Annexure A-1, order of punishment of censure dated 29.7.10. at annexure A-2 and order of appellate authority dated 7.12.10 at annexure A-3 with all consequential benefits including seniority and promotion and pay and allowances.
>
> Or/and
>
> (ii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

5. Learned counsel for the applicant, Shri Sachin Chauhan, stated that the order of 'censure' is bad in law for the following reasons:

(i) The applicant was a supervisory officer as SHO. The Beat Staff of the Police Station, viz. SI Jitender Singh, HC Jayanti Prasad and Constables Balram, Mangat, Mahipal and Vinod, who were also charged with the same allegation, were let off with only a 'warning', but the applicant has been awarded the punishment of 'censure'. It is argued that this is a clear case of discrimination for the following reasons:

> (a) It was the primary duty of the Beat Staff to inspect and ensure that the law/instructions are not being violated by the shopkeepers. The role of SHO is only supervisory in nature.

(b) The defence adopted by the Beat Staff in their departmental proceedings was the same as adopted by the applicant in reply to Show Cause Notice dated 08.06.2010. Thus, two sets of views could not have been taken on the same facts and circumstances and defence. In this regard, the learned counsel relied on orders dated 20.01.2010 passed by this Tribunal in O.A. No.1693/2011 – Const. Brahm Pal vs. Commissioner of Police and others, wherein the Tribunal on the ground of higher punishment given to the applicant therein compared to a co-delinquent, remitted the matter back to the Appellate Authority.

He also relies on the judgment of the Tribunal in O.A. No.1431/2006 - D.S. Manchanda, Ex. Chief Engineer vs. Union of India and another, dated 10.07.2008, in which also there were co-defaulters and the Tribunal went by the principle that there should be parity in the quantum of punishment. There were, however, several other legal issues involved in that case, which are not present in this O.A.

(ii) The charge memo was vague as, though it quotes 'provisions of S.O. No.75', it does not specify which particular provision of S.O.No.75 has not been complied with by the applicant. Thus, the charge memo suffers from vagueness.

(iii) While the charge was very specific about three alleged irregularities detected by the Vigilance Team, in the order of 'censure', the Disciplinary Authority has noted as follows:

> "Further, he even did not prosecute them for violating the condition of fireworks and not having license. Detail briefings were given to him but of no compliance."

(iv) Similarly, in the Appellate Order, the following has been noted:

> "At the time of checking by the Vigilance Team, the shopkeepers had encroached the area on Main M.B. Road and were selling the crackers, without getting any valid license. The circumstances suggest that the appellant seemed to be in connivance with the illegal sellers of crackers and failed to comply with the provisions of SO No.75."

According to the learned counsel for the applicant, these are extraneous charges as the Disciplinary Authority has mentioned "shopkeepers", whereas the charge was specific to only three shops. Moreover, the angle of 'connivance' has been brought in in the Appellate Authority's order, which was not mentioned in the Show Cause Notice.

(v) The fact that only three shops were found to have violated the law/instructions amongst hundreds of shops in that congested market area would rather show that the applicant had very good control over the area, otherwise the number of violators would have been much more.

(vi) As per Delhi Police Rules, 'censure' affects the career of an employee seriously as because of the 'censure', he is denied upgradation under ACP/MACP and also regular promotions.

(vii) In his explanation dated 26.07.2010 (Annexure-4), the applicant had also brought to the notice of the ACP that on

14.01.2009, a TPM was received in his Police Station from Additional Commissioner of Police (ACP) that there is no need for any license to sell upto 100 kg. of amorces and sparklers and the cracker shops were opened just one day before Diwali and, in a short period, it was very difficult to check all the licensed and unlicensed shops.

(viii) S.O.No. 75 provides that for possession and sale of amorces and sparklers in quantity not exceeding one hundred kilograms, no license is required as per the Explosives Rules, 2008.

Amorces and Sparklers are defined in the Rules as follows:

> "Amorces : Any mixture of explosive/fireworks pasted on a strip of paper. Commonly used in toy pistols and guns, and called 'reel.
>
> Sparklers: Sparklers consist of a stick or wire affixed to a mixture of barium nitrate aluminium power iron filling dextrin and gum etc. Commonly called 'Phooljadi'."

(ix) It is stated that in the Show Cause Notice, it is not specified whether the fire crackers were amorces and sparklers or of other varieties, rendering the Show Cause Notice vague.

(x) The Show Cause Notice relies on the report of the ACP Vigilance. The copy of the Vigilance Report had not been supplied to the applicant, which is against the principles of natural justice. In this regard, the applicant relies on the order passed in O.A. No.1431/2006 – D.S. Manchanda vs. UOI and another, dated 10.07.2008.

6. Learned counsel for the applicant stated that the present case is not a case of misconduct on the part of the applicant. In this regard, the learned counsel relies on order of this Tribunal in O.A. No.2210/2006 - G.P. Sewalia vs. Union of India & another, dated 27.08.2008, whereby it has been held as follows:

> "Non-performance of duties, which may have no element of unlawful behaviour, wilful in character, improper or wrong behaviour, misdemeanor, misdeed, impropriety or a forbidden act, may some time amount to not carrying out the duties efficiently, but the same cannot be construed to be misconduct."

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of **Union of India & others** vs. **J. Ahmed** (1979) 2 SCC 286, wherein it had been held that deficiencies in personal character or personal ability would not constitute misconduct for taking disciplinary proceedings. It was further held that negligence in performance of duty or inefficiency in discharge of duty are not acts of 'commission or omission' under Rule 4 of the Discipline and Appeal Rules.

7. Learned counsel for the respondents stated that Diwali is a festival in which every year there are several cases of burns and fire and, therefore, the Police and Fire Brigade have to be extra vigilant during this festival. It is stated that all the Police Officers are aware of this and there are several instructions to this effect to the SHOs. On 17.10.2009, a Vigilance Team visited Ambedkar Nagar Thana

area and conducted a surprise check, in which they found discrepancies mentioned in the Show Cause Notice. The Disciplinary Authority, after considering the reply of the applicant, passed the order of 'censure'. Similarly, the Appellate Authority applied his mind to the appeal petition filed by the applicant and found no ground to interfere with the order of the Disciplinary Authority and rejected the appeal.

8. The learned counsel for the respondents pointed out that claim of the applicant made in the O.A. that he has always rendered his duties with utmost efficiency and diligently and has a satisfactory record, is not a truthful statement, as during his tenure as SHO of Ambedkar Nagar Police Station, he was awarded 9 punishments of 'censure' (out of which 5 were set aside), 4 times warned in writing, 2 advisory memos and one 'displeasure'. It is also argued that the negligence of the applicant in discharge of his duties is also borne out of the fact that he took no action against his subordinates after the lapses were detected.

9. On the question of discrimination, the learned counsel argued that as SHO's responsibility is much higher than that of the Beat Staff. If the applicant had been vigilant and effective, the Beat Staff would not have been negligent and, thus, shopkeepers could not have violated the law. Therefore, the fact that his Beat Staff was not vigilant clearly reflects upon the lackadaisical approach of the

applicant and his lack of supervision of his Beat Staff as well as his area.

10. Regarding the argument put forth by the learned counsel for the applicant that the charge is vague inasmuch as it does not provide which proviso of SO No.75 has been violated, it is stated that this is not significant as the concerned SO specifies each and every condition that has to be followed by the Police Officers and the allegations clearly show which of the provisions he has violated.

11. As regards the ground of extraneous conditions, it is argued that since he was a supervisory officer and the charge was dereliction of duty, the fact that he did not take any action against his subordinates or against the defaulting shopkeepers goes to prove the dereliction of duty part, as a result of which the violation of law/instructions could take place. Secondly, the connivance charge was part of the Show Cause Notice itself and, therefore, it is nothing new that the Appellate Authority has added. Similarly, the expression “shopkeepers” is not meant to mean all shopkeepers, it is meant only the three shopkeepers who have violated the law/instructions. Therefore, it is argued that this contention of the learned counsel for the applicant needs to be rejected.

12. Regarding the copy of Vigilance Report not being supplied to the applicant, it is stated by the learned counsel for the respondents that exact violation detected by the Vigilance Team was communicated to the applicant in the Show Cause Notice. In fact, in his reply dated 26.07.2010, the applicant does not deny the specific charges. He only states that there was a huge crowd and rows of shops and, in the end, he states that the inconvenience caused is deeply regretted and in future all care will be taken. In this reply dated 26.07.2010, he has not asked for copy of the ACP Vigilance Report. His explanation is primarily trying to give reason why it was beyond his control and the control of the Beat Staff to ensure that not a single shopkeeper violates the rule.

13. Heard the learned counsel for both sides and perused the pleadings and judgments.

14. There is no doubt that at the time of Diwali, the Police has to be extra vigilant to ensure that the fire cracker sellers follow the law/instructions in letter and spirit, otherwise, it can lead to serious fire accidents and burn injuries. The Police is very much aware of this and every SHO knows the instructions in this regard. It is his duty to ensure that there is no violation of these instructions. The Vigilance Team found three violations. It is ridiculous to argue that number of violations are far less as compared to the number of shops, as even one violation can lead to

loss of lives and properties of hundreds. Therefore, punishment in such cases of dereliction of duty has to be imposed by the higher authorities, otherwise the Police Commissioner would not be able to enforce safety of citizens. We all know the consequences of negligence by field officers. The result of such negligence of field officers had lead to the 'Uphar Tragedy'.

15. On the question of ACP Vigilance Report not being supplied to the applicant, as argued by the respondents' counsel, this was never raised by the applicant at the stage of enquiry and nor was it necessary because the specific cases of violation by shopkeepers had been clearly mentioned in the Show Cause Notice and the applicant in his reply has also not denied that such violations happened. His explanation only tries to give reasons why it was not possible for him and his team to ensure 100% compliance of law/instructions. Therefore, this is not a valid objection at this stage.

16. On the question of non-specificity of charges, it can be seen that the charges are very specific and being an SHO, the applicant knows that these are cases of violation of SO No.75 and the specific provisions, which are violated are very clear in SO No.75 and need not to be repeated in the Show Cause Notice. Again, in his explanation dated 26.07.2010, he has not raised this issue and clearly is now being raised as an after thought. Coming to the

question of the Disciplinary Authority and Appellate Authority taking into account extraneous issues while deciding the disciplinary matter, it is seen that the charge was of dereliction of duty of a Supervisory Officer. Surely, it is the duty of the Supervisory Officer as an SHO to take action against the shopkeepers and it is not an extraneous charge, it is an inference from the facts of the case. It is not that the applicant is stating that he took action against those shopkeepers. Similarly, "connivance" was in the Show Cause Notice itself and the facts and circumstances suggested "connivance" on the principle of preponderance of probability, which is the guiding principle for departmental proceeding. Thus, this argument of the learned counsel for the applicant also fails.

17. In view of the facts and circumstances in this case and for the reasons stated above, I do not find any merit in the O.A. and the same is, therefore, dismissed. No order as to costs.

(P.K. Basu)
Member (A)

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