CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.3049/2012

New Delhi this 24th day of August, 2016

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

Mohd. Kaleem
Age 54 years,
S/o Late Shri Mohd. Saleem Kidwai
R/o Quarter No.13, Block-A 53,
Rehman Apartments,
Okhala Vihar, Jamia Nagar,
New Delhi. ....Applicant

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

Versus

Govt. of NCT of Delhi through

1. Chief Secretary,
Delhi Secretariate,
I.P. Estate,
Players Building,
New Delhi-110002.

2. The Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

3. The Joint Commissioner of Police,
Southern Range,
Police Headquarter,
M.S.O. Building,
I.P. Estate, New Delhi.

4. Addl. Commissioner of Police,
South East District,
New Delhi.

5. Enquiry Officer,
C/o Addl. Commissioner of Police,
South East District,
New Delhi. ....Respondents

(By Advocate : Mr. N. K. Singh for Ms. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The contour of the facts and material, relevant for deciding the core controversy involved in the instant Original Application (OA), and exposited from the record, is that, a police party headed by applicant, ASI Mohd. Kaleem and consisted of Constables Sanjay and Sunil, has released some of the accused, without taking any appropriate legal action in a criminal case, registered against them and other co-accused, vide FIR No.26 dated 31.01.2009, on accusation of having committed the offences punishable u/s 394/34 IPC by the police of Police Station, C.R. Park. Thus, they were stated to have committed a grave misconduct, in performance of their official duty, as police officers.

2. As a consequence thereof, a joint Departmental Enquiry (DE) was initiated against the applicant and his co-delinquents, an Enquiry Officer (EO) was appointed, vide impugned order dated 27.05.2009 (Annexure A-4) under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 [hereinafter to be referred as "D.P. Rules"]. After completion of the enquiry proceedings, the EO concluded that charges framed against the applicant and his co-delinquents stand fully proved, vide impugned enquiry report dated 21.07.2010 (Annexure A-1).

3. Having completed all the codal formalities, a very lenient view was taken and a penalty of Censure was awarded to the

applicant and his co-delinquents, vide impugned order dated 01.03.2011 (Annexure A-2) by the Disciplinary Authority (DA).

4. Sequelly, the appeal filed by the applicant was dismissed, vide impugned order dated 02.05.2012 (Annexure A-3) by the Appellate Authority (AA) as well.

5. Aggrieved thereby, the applicant has preferred the instant OA, to challenge the impugned DE proceedings and orders, on various pleaded grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

6. The respondents refuted the claim of the applicant and filed the reply. Virtually acknowledging the factual matrix and reiterating the validity of the impugned DE proceedings & orders, the respondents have stoutly denied all other allegations and grounds contained in the main OA, and prayed for its dismissal.

7. Controverting the allegations pleaded in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

8. As indicated hereinabove, the applicant has challenged the impugned enquiry proceedings and orders on various pleaded grounds mentioned therein, but during the course of arguments, the learned counsel for applicant has confined his argument, only to the extent of non-application of mind, while deciding the statutory appeal filed by the applicant by the AA.

9. At the very outset, the learned counsel has contended with some amount of vehemence, that although applicant has filed statutory appeal (Annexure A-8), raising various important points and an application dated 24.01.2012 (Annexure A-10) for condonation of delay, but the same were not decided on merits by means of a quasi judicial order by the AA. Only its result was conveyed to the applicant vide impugned Memo dated 02.05.2012 (Annexure A-3). The argument is that, it was the statutory duty of the AA, to decide the application for condonation of delay the then to decide the appeal on merits, by passing a quasi judicial and speaking order in terms of Rule 23 to 25 of D.P. Rules. Thus, he prayed for acceptance of the OA.

10. On the contrary, the learned counsel for respondents has fairly acknowledged, that no quasi judicial reasoned order has been passed by the AA and its decision was only conveyed to the applicant by Additional Commissioner of Police, vide impugned Memo (Annexure A-3). However, he took pains and urged that since the punishment awarded by the DA was upheld by AA, so this Tribunal has very limited jurisdiction to interfere with the DE proceedings and prayed for dismissal of the OA.

11. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that

instant OA deserves to be partly accepted, for the reasons mentioned hereinbelow.

12. As is evident from the record, that the applicant has preferred the statutory appeal (Annexure A-8) and the application for condonation of delay (Annexure A-10), against the impugned order of the DA, raising very important issues contained therein, but the AA has not decided the same by passing a reasoned and quasi judicial order. Only its decision, that "appeal was rejected on the ground of limitation", was conveyed, to the applicant by Additional Commissioner of Police, by virtue of impugned Memo/order dated 02.05.2012 (Annexure A-3), which reads as under:-

> "Kindly refer to your office letter No.456/HAP – 7th Bn. DAP dated 24.01.2012, on the subject cited above.
>
> The applicant (ASI Mohd Kaleem, No.3370/D) in his appeal filed against the original punishment has not mentioned any reason of delay and the appellate authority rejected his appeal on the grounds of limitation. The decision of the appellate authority is final and question of revisiting by the same authority does not arise in the absence of any provision under the existing Delhi Police (Punishment & Appeal) Rules, 1980. Moreover, Rule 23 of Delhi Police (Punishment & Appeal) Rules, 1980 says that there shall be only one appeal from the original order and the order of the appellate authority shall be final. Hence, the present application of the ASI is not maintainable.
>
> ASI Mohd. Kaleem, No.3370/D may be informed accordingly".

13. Therefore, it is not a matter of dispute that AA has not passed any quasi judicial, reasoned and speaking order on the appeal of the applicant and only its decision was conveyed to him, that his appeal was rejected on the ground of limitation.

14. Be that as it may, the fact remains is that AA has not passed any quasi judicial reasoned order on the application (Annexure A-10) and statutory appeal (Annexure A-8) of the

applicant in terms of Rule 23 to 25 of the D.P. Rules. Even sub-rule (3) of Rule 24, interi alia, postulates, that **the appellate authority may, however, accept an appeal which is barred by limitation, if in his opinion the delay occurred due to circumstances beyond the control of the appellant.**

15. Moreover, according to sub-rule (2) of Rule 25, the AA is required to consider all the points raised in the memorandum of appeal and application for condonation of delay and then to pass speaking order. The mere mention, that the appeal, was rejected on the ground of limitation, vide Memo (Annexure A-3), indeed, cannot be and should not be held to be the complete compliance of Rule 24 and 25 of the D.P. Rules. The right of statutory appeal is a very valuable right of the applicant, which cannot be bye-passed in a very casual manner, as has been done in the instant case. Above all, in any case, the impugned order (Annexure A-3) is very brief, non-speaking and result of non-application of mind and cannot legally be maintained.

16. 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 kind 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."

17. 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 in para 8 held as under:-

"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".

18. 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.***

19. Therefore, it is again reiterated that the impugned order of Appellate Authority (Annexure A-3) is very brief, lacks reasons, non-speaking, against the statutory rules & principles of natural justice, and hence are arbitrary, illegal and cannot legally be sustained in the obtaining circumstances of the case.

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

21. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of hearing of the appeal, the instant OA is partly accepted. The impugned order dated 02.05.2012 (Annexure A-3) passed by the Appellate Authority is set aside. The matter is remitted back to the Appellate Authority to decide the appeal afresh by passing a speaking and reasoned order in view of the aforesaid observations and in accordance with law, within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention, in case the applicant still remains aggrieved by the order passed by the Appellate Authority, he would be at liberty to challenge the impugned orders, by filing independent OA on all grounds contained in the present OA, subject to all just exceptions and in accordance with law.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
24.08.2016

Rakesh