

**Central Administrative Tribunal
Principal Bench**

OA No.100/3098/2013

New Delhi this the 1st day of September, 2016

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

Vijay Nagar,
S/o Shri Ram Singh Verma,
R/o Qtr. No.6, Type-IV,
PS Shakar Pur,
Delhi-110092.

...applicant

(By Advocate : Shri M.D. Jhangra for Shri M.K. Bhardwaj)

Versus

Commissioner of Police & Ors. Through :

1. The Commissioner of Police,
PHQ, IP Estate,
New Delhi.
2. The Joint Commissioner of Police,
South Eastern Range,
Delhi.

...respondents

(By Advocate : Ms. Sumedha Sharma)

ORDER (ORAL)

Hon'ble Mr. V.N. Gaur, Member (A) :-

The applicant, an Inspector in Delhi Police has filed this OA with the following prayers :-

- “(i) To quash and set aside impugned order dated 18.03.2011 and punishment order dated 13.05.2013 and appellate authority order dated 29.07.2013 and direct the respondents to give all consequential benefits to the applicant.
- (ii) To declare the action of the respondents in holding departmental action against the applicant on the basis of false allegations as illegal, unjustified and direct the

respondents to release all the benefits as withheld on account of imposition of punishment of forfeiture of one year approved service temporarily for a period of one year.

- (iii) To award exemplary costs in favour of the applicant.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

2. The respondents have ordered departmental enquiry against the applicant vide order dated 18.03.2011 on the following charges:-

"It is alleged against Inspector Vijay Kumar Nagar, No. D/2561 (PIS No.16880014) that while posted as SHO/Krishna Nagar, East District, Delhi, he failed to take effective steps and evolve suitable strategy to prevent the incidents of robbery in the jurisdiction of Police Station Krishna Nagar. He was directed to nab the gang involved in such incidents but he did not bother to implement the orders of senior officers and to evolve suitable strategy as a result of which a sensational incident of robbery-cum-murder had taken place at C-2/6, Lal Quarter, Krishna Nagar and in this regard a case FIR No.56/11 dated 23.02.2011 u/s 302/394/397/34 IPC, P.S. Krishna Nagar, was registered.

Besides last two months, three incidents of robbery were reported in P.S. Krishna Nagar vide FIRs mentioned below which remained undetected due to his lethargic attitude.

S. No.	FIR No.	U/s	Date	Place
1	02/11	392/34 IPC	02.01.2011	E/4/3, Krishna Nagar, Delhi.
2.	34/11	392/397/34 IPC	01.02.2011	Shop No.A-7/21, Lal Quarter Market, Krishna Nagar, Delhi
3.	40/11	394/397/34	08.02.2011	B-17, East

		IPC		Krishna Nagar, Delhi
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The above act on the part of Inspector Vijay Kumar Nagar, No.D/2561, (PIS No.16880014) amounts to professional incompetence, negligence, irresponsible and carelessness in the discharge of his official duties which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980.”

3. The Enquiry Officer submitted his report on 06.03.2012 by proving the charges against him. The applicant submitted his representation on 17.04.2012 and after considering the same, the Disciplinary Authority passed an order on 13.05.2013, awarding a punishment of forfeiture of two years approved service temporarily, entailing proportionate reduction in his pay for a period of two years. His suspension period from 25.02.2011 to 14.07.2011 was decided as period ‘not spent on duty’ for all intents and purposes. The applicant submitted his appeal against the order of the Disciplinary Authority, which was rejected by the Appellate Authority on 29.07.2013.

4. The applicant has challenged the impugned order on several grounds including non-application of mind by the Disciplinary Authority and Appellate Authority while passing the orders. The learned counsel for the applicant submitted that the applicant had taken all necessary steps that are required for prevention of robbery within his jurisdiction. He had also made sincere efforts to detect the reported crimes of robbery by forming a special team under his own close supervision. He had succeeded in identifying the Saleem Gang based in Lucknow (U.P.), involved in the robberies and several raids were conducted at his hide

outs, he was not able to apprehend the criminal. The applicant had raised this and several other grounds in his representation submitted to the Disciplinary Authority and later in his appeal to the Appellate Authority, despite that neither the Disciplinary Authority nor Appellate Authority took into account the pleas raised by the applicant. He further stressed that it was the statutory requirement of the concerned authorities to specifically deal with the grounds raised in the representation while passing quasi-judicial orders and non compliance with this requirement would render these orders un-sustainable in law.

5. The learned counsel for respondents on the other hand, submitted that the applicant was holding the post of SHO at the relevant point in time, which was the cutting edge level post. During that period, several heinous crimes of robbery had taken place in his area, but he failed to detect those cases. The respondents conducted the disciplinary enquiry against the applicant following the procedure as laid down in the Delhi Police (Punishment and Appeal) Rules, 1980, and gave all opportunities to the applicant to defend himself. The orders of Disciplinary and Appellate Authorities were also passed after taking due note of the grounds raised by the applicant in his representations or appeal. Therefore, there was no merit in the OA and the same deserved to be rejected.

6. We have heard the learned counsels for the parties and perused the record. The main charge against the applicant was that he failed in taking suitable steps to prevent the incidents of robbery in his area, to nab the criminals involved in such incidents, and also failed in detecting

three specific incidents of robbery reported in January/February 2011 in his area. The applicant has challenged the impugned orders on several grounds and one of the grounds which has been highlighted by the learned counsel for applicant is that the order passed by the Appellate Authority has not dealt with the contentions raised by the applicant in his appeal. The Appellate Authority had noted some of the contentions of the applicant raised in this application dated 18.06.2013 in the order dated 29.07.2013 but did not comment on the same.

7. The relevant part of the order of the Appellate Authority reads as under :-

“The main pleas raised by the appellant in his appeal in the case are as under :-

1. That his contentions and evidence in support of the same clearly prove that appellant had made all sincere efforts to prevent the recurrence of robberies and also taken all steps to detect the reported heinous crime by forming special team under his own close supervision. The appellant had succeeded in identifying the Saleem gang based in Lucknow (UP), involved in the robberies and raids were conducted at the hide outs of the gang members but, they could not be arrested as they were changing their hide outs frequently. The appellant was abruptly shifted to the District Lines on 23.3.2011;
2. That a long period of 13 months has been taken by the disciplinary authority in passing the final order after submission of the representation by the appellant and hearing him in person;
3. That the appellant was posted as SHO, Krishna Nagar on 21.1.2009 and worked as SHO successfully for more than 2 years. All the crime was well under control in the area in the last two years of the posting of the appellant. Therefore, the allegation of professional incompetence is a vague allegation and such

types of allegations do not attract punitive action as done with the appellant;

4. That DWs-1, 3 and 4 have proved that a special team consisting of them was formed by the appellant under his own supervision to identify the gang involved in the robberies in question in the area of Krishna Nagar in the 1st quarter of 2011. They interrogated all criminals involved in the crime of such nature of PS Krishna Nagar, adjoining PSs and North-East Distt. They also conducted intensive raids and found that the local gangs are not involved in the crime. The team deployed by the appellant collected intelligence through its sources. This team established the involvement of Saleem Gang of Lucknow UP on the above said cases during the tenure of the appellant. They conducted raids under the supervision of the appellant on the hide outs in Pappu Colony, Shahid Nagar, Loni, Ghaziabad and various other places in UP. The DWs further stated that the appellant was transferred to Distt. Line on 23.2.2011 but they continued investigation of the cases on the same lines and conducted raids on the hide outs of this gang and succeeded in arresting members of the Saleem Gang on 16.3.2011 from Lucknow and the case was worked out;
5. That DW-5 has proved that special armed pickets were deployed at Lal Quarter, Kapoor Jewellers and Liberty Chowk, Krishna Nagar from 7 AM to 7 PM. QRT vehicle with armed staff was deployed from 8 AM to 8 PM in Lal Quarters, Krishna Nagar. Six motor-cycles fitted with wireless sets were deployed for patrolling round the clock in these areas. The appellant was carrying out joint patrolling in the area with the Beat Staff and Division Officers. Extra patrolling was deployed at Pushta Road from 4 PM to 8 PM and from 4 AM to 8 AM, after analyzing the crime pattern and timings. All the points prove that the appellant had a certain strategy to prevent and detect crime in the area and was quite active in the day to day working as SHO, Krishna Nagar;

6. That the disciplinary authority totally ignored the evidence of Defence Witnesses and awarded the punishment in an arbitrary manner.”

8. The above contentions of the applicant were considered and dealt with by the Appellate Authority in the following manner :-

“I have heard the appellant Inspr. Vijay Kumar Nagar No.D/2561 in O.R. and considered his appeal in the light of facts and circumstances of the case, evidence available in DE file and pleas put forth by him. None of the appellant’s pleas has any force. However, keeping in view the above facts and circumstances of the matter, I am of the view that the punishment awarded to the appellant by the Disciplinary Authority is a little harsh. Therefore, I am inclined to take a lenient view and reduce the punishment from forfeiture of two years approved service temporarily to that of the punishment of forfeiture of one year approved service temporarily for a period of one year.”

9. The Appellate Authority has, thus, disposed of the contentions of the applicant simply by stating that “None of the appellant’s pleas has any force”. At the same time, while acknowledging that the contentions of the applicant had no force, the Appellate Authority went on to note that punishment awarded to the applicant by Disciplinary Authority was little harsh and, therefore, he reduced the punishment of two years approved service temporarily to that of the punishment of forfeiture of one year approved service temporarily for a period of one year. Apart from the obvious contradictions between the two stands taken in that order, it also does not comply with the Rule 25(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 which reads as follows:-

“25. **Orders on appeal.**—(1) On appeal, the appellate authority may,

- (a) Confirm the impugned order, or

- (b) Accept the appeal and set aside punishment order, or
 - (c) Reduce the punishment, or
 - (d) Disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.
 - (e) Remit the case to the authority which made the order or to any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or make such further enquiry as it may consider proper in the circumstances of the case; or
 - (f) Pass such other orders as it may deem fit.
- (2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the appellant.”

10. In ***Chairman, D.A., Rani Lakshmi Bai Vs. Jagdish Sharan Varshney And Ors.*** (2009) 4 SCC 240, the Hon’ble Supreme Court considered this issue and held that the appellate authority must indicate the reasons, at least in brief, in order to disclose an application of mind.

The relevant part of the judgment reads as under :-

“In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover’s case (supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any

reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. Vs. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. Ltd. Vs. Union of India, AIR 1976 1785 (vide para 6), etc. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

11. We are, therefore, of the view that the grounds raised by the applicant in the appeal submitted to the Appellate Authority first need to be considered by the Appellate Authority through a reasoned and speaking order. The OA is, therefore, disposed of with a direction to the Appellate Authority to consider the appeal of the applicant submitted on 18.06.2013, and pass a reasoned and speaking order, dealing with the contentions raised in the appeal, within a period of three months from the date of receipt of a certified copy of this order.

12. It is made clear that we are not expressing any view on the other grounds raised by the applicant of this OA, lest it should affect the case of either of the parties. Further, it goes without saying that the applicant will be at liberty to approach this Tribunal in case he is not satisfied with the order to be passed by the Appellate Authority. No costs.

(V.N. Gaur)
Member (A)

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

1st September, 2016

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