

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3106/2016

Monday, this the 16th day of April 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Manmohan Singh, age 47 years
Group B
s/o Sh. Om Prakash
R/o B-106, Mahavir Apartment, Plot No.5A
Sector 22, Dwarka
New Delhi – 110 075

..Applicant

(Mr. Pardeep Dahiya, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
PHQ, IP Estate, New Delhi
2. Joint Commissioner of Police
South Eastern Range
PHQ, IP Estate
New Delhi
3. Dy. Commissioner of Police
South District, Hauz Khas
New Delhi

..Respondents

(Ms. Sangita Rai, Advocate)

O R D E R (ORAL)

The applicant, an Inspector in Delhi Police, at the relevant point of time, was working as Station House Officer (SHO), In-charge of Vasant Kunj North Police Station. For some alleged discrepancy in the performance of his duties, the applicant was issued Annexure A-3 show cause notice (SCN) dated 23.11.2013, which reads as under:-

“On the intervening night of 21/22.11.13, on receipt of secret information regarding late night party at ‘Billionaire’, a night club in the area of PS Vasant Kunj North in which some illegal activities may taken place, the undersigned directed Night GO, South District Sh. Kulbushan Sharma to immediately conduct a raid at the spot. Simultaneously, the local police was also directed to reach at the spot.

On reaching the spot, it was revealed that the club was running at 2 AM, which is beyond the permitted hours. Customers were dancing on loud music of DJ and liquor was being served. 13 boys of below 25 years were present in the club, which is violation of Delhi Excise Act.

Gross violation of various laws / rules as mentioned above amounts to grave negligence, dereliction of duty and poor supervision (over beat / division staff) on the part of Inspr. Manmohan Singh, SHO/V.K. North. Therefore, you are called upon to explain that why your conduct should not be censured. Your reply, if any, should reach this office within 7 days from the receipt of this communication otherwise the matter will be decided on merits.”

2. The applicant was required to submit his reply within 7 days, as stipulated in the Annexure A-3 SCN. He, however, submitted his Annexure A-4 reply dated 18.01.2014. The disciplinary authority, however, went ahead and passed the impugned Annexure A-1 punishment order dated 21.01.2014 imposing the penalty of ‘censure’ on the applicant. The applicant challenged the Annexure A-1 punishment order before the appellate authority by filing his Annexure A-5 appeal dated 19.03.2014. The appellate authority, however, vide its impugned Annexure A-2 order dated 22.01.2015, dismissed the appeal and upheld the punishment awarded by the disciplinary authority.

Aggrieved by the impugned Annexures A-1 & A-2 orders, the instant O.A. has been filed by the applicant praying for the following main relief:-

“(b) Quash and set aside the impugned orders dated 22.1.2014 (Annexure A-1) and 22.1.2015 (Annexure A-2) passed by the disciplinary authority and appellate authority respectively.”

3. During the course of hearing, Mr. Pardeep Dahiya, learned counsel for applicant submitted that although the applicant had already filed his reply to Annexure A-3 SCN on 18.01.2014, but the disciplinary authority did not consider it and passed Annexure A-1 penalty order dated 22.01.2014, in which the disciplinary authority has wrongly mentioned that “but he has not submitted his written reply till date”. He thus argued that on this count itself, the impugned orders are required to be quashed and set aside, and the matter be remanded back to the disciplinary authority for passing fresh order after taking into consideration the reply filed by the applicant.

4. Ms. Sangita Rai, learned counsel for respondents submitted that the appellate authority passed its Annexure A-2 order on 22.01.2015 whereas the O.A. has been filed on 23.08.2016 after a delay of 7 months and as such on the ground of limitation itself, the O.A. deserves to be dismissed.

5. Replying to the point raised by learned counsel for respondents, Mr. Dahiya stated that Annexure A-2 order of the appellate authority was, in fact, received by the applicant on 17.09.2015 and to this effect, the applicant has made an averment in paragraph 4.7 of the O.A. He further drew my attention to Annexure A-2 order at p. 21-B of the O.A. wherein it is clearly mentioned that the file has been returned after compliance on 17.09.2015, meaning thereby that the appellate authority’s order has been served upon

the applicant on that day. In view of this, I am of the opinion that the O.A. has been filed well within the time limit prescribed by the Administrative Tribunals Act, 1985.

6. It is quite clear from the records that reply of the applicant dated 18.01.2014 has not been taken into consideration by the disciplinary authority in passing the impugned Annexure A-1 order despite the fact that the reply was available in the office of disciplinary authority well before the impugned Annexure A-1 order was passed. Learned counsel for respondents, however, submitted that the applicant was required to file reply to the SCN within 7 days but failed to do so. Thereafter two reminders were sent to him, yet he did not file the reply, and that he finally filed reply on 18.01.2014, i.e., just after 3 days before passing of Annexure A-1 order, by which time the file had already moved from down below to the disciplinary authority.

7. I have considered the arguments of learned counsel for the parties and perused the materials placed on record. The fact of the matter is that applicant's reply dated 18.01.2014 was available with the office of the disciplinary authority three days prior to the passing of the impugned Annexure A-1 order by the said authority. Hence, mention of, in its order, "but he has not submitted his written reply till date" by the disciplinary authority is factually incorrect. It was the responsibility of the office of the disciplinary authority to place the reply of the applicant, *albeit* received beyond the period prescribed in the SCN, before the disciplinary authority. Hence, the impugned Annexures A-1 & A-2 orders have been passed

without taking into consideration the defence of the applicant in his reply. I, therefore, feel that the principles of natural justice have not been followed by the disciplinary authority. On this ground alone, both these orders are required to be quashed and set aside, and the matter deserves to be remanded back to the disciplinary authority for passing a fresh order after taking into consideration the reply of the applicant dated 18.01.2014.

8. In the conspectus of discussions in the foregoing paragraphs, Annexure A-1 order dated 21.01.2014 passed by the disciplinary authority and Annexure A-2 order dated 22.01.2015 passed by the appellate authority are quashed and set aside. The matter is remanded back to the disciplinary authority to pass a fresh order taking into consideration the defence of the applicant in his reply dated 18.01.2014. No order as to costs.

(K.N. Shrivastava)
Member (A)

April 16, 2018
/sunil/