

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No. 3307/2014

Reserved On: 04.08.2016

Pronounced on:10/08/2016

Hon'ble Mr. Justice, M. S. Sullar, Member (J)

Hon'ble Shri V. N. Gaur, Member (A)

W/Ct. (Exe.) Aruna Sharma

Belt No.2273/W, PIS No. 28061967

D/o. S. Vishnu Dutt

R/o. House No. 16,

Prem Nagar, Bahadurgarh, Haryana.

Presently posted at PS Rajouri Garden,

Group 'C', Aged 29 years.

....Applicant

(Argued by: Mr. Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
MSO Building, New Delhi.
2. Joint Commissioner of Police,
South Western Range, New Delhi.
Through Commissioner of Police,
PHQ, I.P. Estate,
MSO Building, New Delhi.
3. Addl. Deputy Commissioner of Police
West District
Through Commissioner of Police,
PHQ, I.P. Estate,
MSO Building, New Delhi.

....Respondents

(By Advocate : Ms. Harvinder Oberoi)

ORDER

Justice M. S. Sullar, Member (J)

Applicant, Aruna Sharma, Woman Ct. (Ex.), has preferred the instant Original Application (OA), to challenge the impugned orders dated 09.06.2011 (Annexure A-1), whereby a Departmental Enquiry (DE) was initiated against her by the competent authority, enquiry report conveyed to her vide Memorandum dated 18.08.2012 (Annexure A-2), order dated

26.10.2012 (Annexure A-3), vide which a penalty of forfeiture of one year's approved service temporarily entailing reduction in her pay was imposed by the Disciplinary Authority (DA). She has also assailed the impugned order dated 01.07.2013 (Annexure A-4), by virtue of which her appeal was dismissed by the Appellate Authority (AA) as well.

2. The sum and substance of the facts and material, relevant for deciding the present OA, exposted from the record is that, applicant, Aruna Sharma reported late for duty on many occasions after her transfer. Accordingly, she was dealt with departmentally, under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"). A DE was initiated against her, vide impugned order dated 09.06.2011 (Annexure A-1) and the Enquiry Officer (EO) was appointed, by the competent authority.

3. As a consequence thereof, EO recorded the evidence and after following the due procedure of enquiry under the D.P. Rules, issued the following summary of allegation to the applicant:-

"I, Insp. R. N. Choudhary No.-D-3464, Posted at PS. Mayapuri, West Distt., New Delhi hereby charge you W/Ct. Aruna No. 2273/W (PIS No. 28061967), that on the following occasions while being transferred from one Unit to another Unit of Delhi Police you reported late but you didn't intimate to the senior officers or gave your any written submissions to the concerned authorities with regard to the delay in reporting.

1. That you departed to PTC for drill course on 13/11/10 vide DD No. 9 Outer Zone PCR at 9 am but you reported at PTC Jharoda Kalan on 16/11/10 vide DD No. 13B, PTC Jharoda Kalan, after the gap of 3 days.

2. That, when you were sent back from PTC Jharoda Kalan to Outer Zone PCR vide DD No. 25B, PTC Jharoda Kalan dated 18/11/10, then again you reported at Outer Zone PCR on 23/11/10 vide DD No. 18, after a gap of 5 days.

3. That, when you were relieved on transfer from Outer Zone PCR to Centre Zone PCR vide DD No. 28 dated 23/12/10 Outer Zone PCR then

again you reported to Centre Zone PCR vide DD No. 21 dated 27/12/10, after the gap of almost four days.

I further charge you that while posted at Outer Zone PCR you had already availed 13 days casual leave as per the C.L. record of Outer Zone PCR during the year 2010. But on being transferred from Outer Zone PCR to Centre Zone PCR, you deliberately misused the official stamp of Insp. Admn. Outer Zone PCR and forged his Signature for the illegal gain of extra two days casual leave.

The above act on the part of you W/Ct. Aruna No. 2273/W (PIS No. 28061967), amounts to gross misconduct, negligence, carelessness, dereliction in the discharge of your official duties and unbecoming of a Police Officer, which render you liable to be dealt departmentally under the provisions of Delhi Police Punishment and Appeal Rules 1980.”

4. The EO appreciated the evidence and concluded that the charges framed against the applicant, stand fully proved, vide impugned enquiry report dated 18.08.2011 (Annexure A-2).
5. Concurring with the findings of the EO, the DA awarded the indicated punishment to the applicant, vide impugned order dated 26.10.2012 (Annexure A-3), which was upheld by the AA vide order dated 01.07.2013 (Annexure A-4).
6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned enquiry report and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.
7. The case set up by the applicant, in brief, in so far as relevant, is that, no evidence was emerged in the DE that she has misused the seal of the Inspector (Admn.) and forged his signature to avail undue benefit nor did she join her duty in time, at the place of posting, after her transfer. The enquiry was conducted with close mind with a pre-conceived notion that, she has misused the official seal and forged the signature. This opinion was formed without sending the documents to the Handwriting Expert, after obtaining her specimen signature.

The EO has relied upon the contradictory evidence and proved the charge of forging the signature of Inspector (Admn.), Outer Zone, PCR qua applicant.

8. It was further alleged that the medical certificates submitted by applicant were genuine, as she was suffering from maternity complications, but the EO took an unjust and inhuman approach, while proving the charge. The report of the EO is based on “no evidence”, but the Disciplinary and Appellate Authorities have wrongly relied upon the impugned enquiry report. The DA has punished applicant on the basis of surmises and conjectures considering the fact that, she was sharing room with the reader of Inspector (Admn.), table drawer in which the official seal of Inspector (Admn.) was kept, remains open and applicant has misused the seal in his absence. There is no direct evidence on record to prove that, she has misused the official stamp of the Inspector (Admn.) and forged his signature on her leave application.

9. According to the applicant, the AA has rejected her appeal without considering the relevant factors & legal points raised in the appeal and, mechanically endorsed the order of the DA. The authorities have ignored the fact that she (applicant), on her own accord, reported on duty after availing only 2 days Casual Leave, out of 4 days sanctioned Casual Leave and hence, she has not availed excess Casual Leave or has not illegally gained 2 days extra Casual Leave.

10. The applicant has termed, the impugned enquiry report and orders as arbitrary, illegal, without jurisdiction and result of non-application of mind. On the strength of the aforesaid grounds, the applicant has sought quashing of the enquiry report as well as the impugned orders, in the manner indicated hereinabove.

11. The contesting respondents refuted the claim of the applicant and pleaded as under:-

“The brief facts of the case are that W/Const. Aruna, No.2273/W (PIS No.28061967) applicant was dealt departmentally under Delhi Police (Punishment & Appeal) Rules, 1980, vide this Office Order No.9076-9100/HAP(P-1) West, dated 9.6.2011 on the allegation that while she was posted in Outer Zone/PCR, had already availed 13+8+2 days Casual Leave as per the C.L. record of Outer Zone during the year 2010. On being transferred, she misused the official stamp of Inspector (Admn.) and also made his forged signature for her wrongful gain. She also nourished a tendency of being absent whenever she was directed to report from one place to another. She was relieved to PTC for drill course on 13.11.2010 vide DD No.9, Outer Zone PCR at 9 AM but she reported at PTC Jahroda Kalan on 16.11.2010 vide DD No.13-B, PTC Jharoada Kalan after 3 days. She was sent back from PTC to PCR vide DD No.25-B, PTC dated 18.11.2010, but she reported in Outer Zone vide DD No.18 after gap of 5 days. She was relieved on transfer from Outer Zone to Central Zone vide DD No.28, dated 23.12.2010, but she reported after a gap of 3 days, 19 hours and 35 minutes vide DD No.21 dated 27.12.2010.

The departmental enquiry against the applicant was contemplated vide this office order No.6928-50/HAP (P-I) West, dated 5.5.2011 and further the Departmental Enquiry was ordered and entrusted to Inspector R.N. Choudhary, No.D-3464, Inspector/Investigation, PS Maya Puri vide this Office Order No.9076-9100/HAP(P-1) West, dated 9.6.2011 for conducting the same on day to day basis. The EO had prepared the summary of allegations etc. and served upon the same to the applicant on 29.10.2011. The Enquiry Officer recorded the statements of 9 PWs in the presence of the applicant. The Enquiry Officer, (sic) after having considered the depositions of all the 9 PWs, framed charge and accordingly served upon the applicant on 16.6.2012. The applicant did not plead guilty. She was directed to produce the DWs, if any in her defence. On 07.07.2012, the applicant had submitted her defence statement along with three Medical Certificates issued from Shri Balaji Action Medical Instituted (sic) FC-34, A4, Paschim Vihar, New Delhi (a unit of Lala Munni Lal Mange Ram Charitable Trust) and requested to drop the charge levelled against her. The Enquiry Officer after having considered the deposition of 9 PWs, evidence came on record and statement of defence in the light of the facts and circumstances of the case submitted his finding concluding therein that the charges of late reporting of applicant on transfer from one unit to another unit and misusing the official seal of Inspector/Admn., Outer Zone/PCR and forging the signature of Inspector/Admn., Outer Zone/PCR were prove. Tentatively,

agreeing with the findings of E.O., a copy of the finding was served upon the applicant vide this Office (sic) U.O. No.14111/HAP (P-I)/West dated 18.08.2012, which was acknowledged by her on 27.08.2012. She had submitted her reply in response to the finding vide this office dy.No.6516/HAP (P-1) West, dated 21.09.2012. In her reply the applicant had stated that the reply which was given to the Enquiry Officer during the DE proceeding, the said reply be treated in response to the finding. In her reply, she was requested to give her 15/20 days more to appear in orderly room which was granted to her”.

12. The case of the respondents further proceeds, that during the course of hearing her in Orderly Room (OR) on 19.10.2012, she admitted her fault and requested for lenient view. Keeping in view all the facts and circumstances and evidence on record, the DA as well as AA have carefully considered the defence statement, evidence on record and after hearing her in OR on 19.10.2012, rightly passed the impugned orders. It was alleged that the applicant has admitted her mistake of late report and requested to forgive her with an assurance that, she will not repeat such mistakes in future and perform her duty with utmost care and responsibility.

13. Virtually acknowledging the factual matrix and reiterating the validity of the impugned enquiry report and orders, the respondents have stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal.

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

15. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after

bestowal of thoughts over the entire matter, we are of the firm opinion that there is no merit, and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

16. Ex-facie, the arguments of learned counsel that applicant could not join duty in time on her transferred post on account of her maternity complications, which is clear from the medical record and since there is no cogent evidence on record to prove that she has misused the official stamp of Inspector (Admn.), Outer Zone & forged his signature, so the impugned enquiry report is result of non application of mind and impugned orders based on such report are liable to be set aside, are neither tenable nor the observation of Hon'ble Apex Court in case of ***Union of India Vs. H.C. Goel AIR 1964 SC 364*** and of this Tribunal in case of ***Ct. Jagmohan Vs. GNCT of Delhi & Others*** in ***OA No.2167/2007*** decided on 19.05.2009, are at all applicable to the facts of the present case, wherein it was observed that mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules, which govern criminal trials in courts, may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules and a Government employee should not be punished on a charge which is vague and of which there was no evidence forthcoming whatsoever and on a charge,

which has not been levelled against him in the initial charge memo or allegations of misconduct.

17. There can hardly be any dispute with regard to the aforesaid observations, but the same would not come to the rescue of the applicant in the present controversy. As reproduced above, specific charges of not joining in time, on various pointed occasions, to her place of posting after transfer and deliberately misusing the official stamp and forging the signature of Inspector (Admn.) for her illegal gain of extra 2 days causal leave, were specifically alleged/served to the applicant.

18. As is evident from the record that, very clear and specific charges were served upon the applicant by the EO. The prosecution in order to substantiate the charges framed against the applicant, examined PW-1 HC Dinesh Kumar, PW-2 HC Yash Pal Singh, PW-3 HC Jeet Raj Singh, PW-4 Ct. Ravinderan, PW-5 Inspector Dara Singh, PW-6 Ct. Anil Kumar, PW-7 SI Ramesh Chand and PW-8 Inspector Jogi Ram Punia in oral evidence, besides producing documentary evidence. The applicant did not cross-examine PW-1 to PW-3 despite opportunity. However, remaining witnesses were cross-examined, but no substantive material could be elicited from their cross-examination to dislodge their testimony.

19. Not only that, after the close of evidence of the prosecution, the defence statement of the applicant was recorded, which reads as under:-

In response to the charge served upon me, most humbly and respectfully I submit the following for your kind consideration.

I regret very much and feel unfortunate that I was unable to inform my office in advance about my inability to report in time on transfer to the new Units in 3 occasions in the months of November and December, 2010. The lapse on my part was happened as I was in the advanced stage of pregnancy and related medical complications and also was under severe mental trauma and depression due to some family troubles with my in-laws during this period. Since my absence was not marked on these occasions, I kept my medical papers with me to submit with my explanation. But instead of seeking my explanation, a PE was ordered against me in the month of January, 2011 and I explained this to the enquiry officer. As regards my issues with my in-laws, I have submitted a representation to my senior officers, but my Inspector-in-charge advised me not to press for forwarding to senior officers and to settle in family level, and hence, I have withdrawn the same.

The mistake of late report and non-intimation was due to (sic) the above explained disturbing circumstances and I humbly request your goodself to forgive me and I assure that I will not repeat any such mistake in future and perform my duties with utmost (sic) care and responsibility.

As far as the 2nd allegation of forging signature and misusing official stamp is concerned, I am honestly saying that I have not even imagined of such things. The truth is that I handed over my leave application to the concerned to get it verified from CL records. After sometime when I got it back, it was the report on CL availability duly signed and stamped. During my leave once I recollected and compared with my own records, I realized that the CL shown as available in excess and, hence, I resumed my duty and reported this to office. It is a matter of common sense that it is not the stamp and sign affixed in going to give any undue benefit. In the DE, the dealing person concerned has admitted that he wrote the report and then the subsequent sign and stamp has to come automatically and I had no reason to pain or risk of forging signature which I was not familiar with and putting the stamp whereabouts of which was unknown and inaccessible to me. Neither I put forged signature nor I misused the stamp.

Keeping in view of the above facts mentioned above, I request you to kindly have a lenient view and drop the charges levelled against me”.

20. Meaning thereby, the applicant has categorically admitted her misconduct, subject matter of the charge sheet, which is otherwise proved on record by the cogent evidence, as discussed hereinabove.

21. As regard second part of the charge with regard to forging the signature and misusing the official stamp is concerned, the applicant has unsuccessfully attempted to deny the same, but she has not examined a single witness in her defence. On the

contrary, PW-4 Ct. Ravindran, reader to Inspector (Admn.), Outer Zone, proved his previous statement Exhibit PW-4/A. The mere fact that PW-4 has denied that he had not seen the applicant using the official stamp of Inspector (Admn.), which used to be in his custody, ipso facto, is not a ground, much less cogent, to ignore the statement of Exhibit PW/A of PW-4 because applicant would not tamper the signature or use the stamp of the Inspector (Admn.) in the presence of PW-4. Similarly, PW-5 Inspector Dara Singh, who conducted the preliminary enquiry against the applicant proved the statements of witnesses Exhibit PW-4A, Exhibit PW-5/A, Exhibit PW-5/C, Exhibit PW-5/D. He has also proved PE report Exhibit PW-1/A, Exhibit 1/B, Exhibit 5/F and Exhibit 2/A, which duly proved the complicity of the applicant. Therefore, it cannot possibly be saith that there is no evidence on record to prove the charges against the applicant, as urged on her behalf, particularly when it is now well settled proposition of law that, provisions of Evidence Act are not strictly applicable in case of Departmental Enquiry, as applicable in criminal trials. The EO was required to decide the real controversy between the parties, on the Doctrine of preponderance of probability of evidence.

22. Sequelly, the next contention of learned counsel that since the absence of the applicant was not wilful, but on account of her maternity complications, so she cannot be punished, is again not only devoid of merit, but misplaced as well and deserves to be ignored for more than one reason.

23. At the first instance, the applicant was not charge sheeted or punished on account of her wilful absence, but she was charge sheeted for commission of specific misconduct leading to her non-joining at her place of posting, after her transfer on many occasions (mentioned in the charge sheet) and for forging the signature and misusing the official stamp of Inspector (Admn.) for her illegal gain of extra 2 days Casual Leave.

24. Secondly, assuming for the sake of argument, she was suffering from maternity complications, even then she cannot claim illness leave of her own, as matter of right, as contemplated under SO 111 and Rule 7 of the CCS (Leave) Rules, 1972 (hereinafter to be referred as "Leave Rules"). Besides Rule 7, Rule 19 (1)(ii) postulates that, in respect of a non-Gazetted Government servant, an application for leave on medical grounds shall be accompanied by a medical certificate Form 4 given by a CGHS doctor. She was required to inform the department and ought to have got her leave sanctioned from the competent authority as per relevant rules, which is totally lacking in the present case. As mentioned above, the applicant has admitted her fault and prayed for leniency in her defence statement as well as during the course of hearing in OR.

25. Having completed all the codal formalities and taking into consideration the entire evidence on record, the DA has considered all the relevant factors while imposing the punishment of forfeiture of one year's approved service to the

applicant vide order dated 26.10.2012 (Annexure A-3). The operative part of the said order reads as under:-

“I have also perused the defence statement of the delinquent W/Constable Aruna, No.2273/W which was given to the enquiry officer during the DE proceeding. In her defence statement the delinquent W/Constable Aruna, No.2273/W regretted that she was unable to inform office in advance about her inability to report in time on transfer to the new Unit in 3 occasions in the months of November and December-2010, The lapse on her part was happened as she was in the advance stage of pregnancy and related medical complications and also was under severe medical trauma and depression due to some family troubles with her in-laws during this period. The mistake of late report and non intimation, she has requested to forgive her and she assured that she will not repeat such mistake in future and perform her duties with utmost (sic) care and responsibility. As far as the allegations of forging signature and misusing official stamp is concerned, she has stated that she has handed over her leave application to the concerned to get it verified from C.L. records. After sometime when she got it back, it was with the report on C.L. availability duly signed and stamped. Neither she put forged signature nor she misused the stamp.

I have carefully gone through the written submission made by the delinquent in response to the findings as well as whole D.E. file including statement of PWs, charge, written defence statement, findings of the EO and facts and evidences which came on record during the DE proceedings. As per deposition of PW-4, Constable Ravindran T. No.2888/OD, reader to Inspector Admn., Outer Zone has stated during the cross examination that the delinquent was sharing the office room with him and the said table drawer in which the seal of Inspector Admn., was kept. W/Constable Aruna might have misused the seal in his absence. PW-9, Inspector Abhinendra Jain, No.D/2235, has deposed during the DE proceeding that on getting information on 30.11.2010 vide a letter of Inspector Admn., Central Zone/PCR dated 30.12.2010, he checked the copy of leave certificate issued to the delinquent and found a signature on that which was identical to his signature over the official seal of Inspector Admn., but it was not his signature. During cross examination, he stated that the custodian of his official seal was his reader.

The delinquent W/Constable Aruna, No.2273/W was heard in OR on 19.10.2012. During OR she did not say anything new except for what she has stated in her defence statement. She has requested for lenient view and that she will not repeat such mistake in future. In view of above, I, therefore, order to impose a penalty of one year approved service forfeiture temporarily for a period of one year entailing reduction in her pay from Rs.8310/- + G.P. Rs.2000 to Rs.7830/- + G.P. Rs.2000/- with immediate effect”.

26. Likewise, the AA has also considered all the issues and upheld the punishment order and rejected the appeal of the applicant vide impugned order dated 01.07.2013 (Annexure A-4). They have passed reasoned orders, which cannot legally be interfered with by this Tribunal in view of the ratio of law laid down by Hon'ble Apex Court in the cases of **B.C. Chaturvedi**

Vs. U.O.I. & Others AIR 1996 SC 484 and K.L. Shinde v. State of Mysore, (1976) 3 SCC 76.

27. Therefore, taking into consideration the pointed material and evidence on record, and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the evidence of the prosecution. The DA has rightly imposed the indicated punishment, which was upheld by the AA. The DA as well as AA have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case.

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

29. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
10.08.2016

Rakesh