

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.4252/2012

New Delhi this the 3rd of May, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Jagjit Singh

Age 55

S/o Late Shir Diwan Singh

A-1, Ashoka Lane,

Opp. Chanakya Puri,

New Dehi.

...Applicant

(Argued by: Mr. Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
Southern Range,
Delhi.
3. The Deputy Commissioner of Police,
West District,
New Delhi.Respondents

(By Advocate : Mrs. Harvinder Oberoi)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The epitome of the facts and material, expository from the records, which needs a necessary mention for the limited purpose to decide the core controversy involved in the instant Original Application (OA) are that the applicant, Inspector Jagjit Singh, was posted as SHO, Police Station, Moti Nagar, New Delhi. The Disciplinary Authority (DA)

issued impugned notice dated 22.1.2009 to him and other police officials to show cause as to why their conduct be not censured. The applicant filed the reply which was found to be unsatisfactory. Taking into consideration the allegation, reply and dereliction of duty, the conduct of the applicant was censured by competent authority vide impugned order dated 26.03.2009 (Annexure A-1). Similarly, the appeal filed by him was dismissed by way of order dated 22.09.2009 (Annexure A-2) by the Appellate Authority.

2. Aggrieved thereby, the applicant has preferred the present OA, challenging the impugned Show Cause Notice (SCN) and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

3. The applicant claimed that the impugned orders are illegal, arbitrary, unjust and were passed in violation of principles of natural justice. He was not at fault. There was a regular patrolling in the beat. Further, the specific directions were given to the shopkeepers regarding illegal parking of vehicles and consumption of liquor in the parked vehicles. The authorities failed to consider the specific plea of the applicant.

4. According to the applicant, the present case is a case of no misconduct as present allegations do not constitute misconduct. Even he was not present at the spot when the surprise check was made at Paramjeet Fish Corner at 8.10 p.m. on 19.01.2009. The department was under the

obligation to provide the copy of report of Special Checking Staff dated 19.01.2009 to him, before imposing the punishment. It was pleaded that the authorities failed to consider that these types of activities sometimes get aggravated due to presence of government liquor vend, which is only a shop away from the said fish eating point. Generally people stop their vehicles on the road and go for purchasing the liquor. The road is also narrow at the place due to projection of shops. A drive of removal of encroachment from road was also launched with the help of traffic police and MCD staff. On the basis of aforesaid grounds, the applicant has sought quashing of the impugned SCN and orders, in the manner indicated hereinabove.

5. The contesting respondents refuted the claim of the applicant and filed the reply wherein it was pleaded that as per direction of DCP, West District, a special checking was made in the evening of 19.01.2009 around Chiken/Fish corners. During the course of checking, it revealed that from 8.10 p.m. to 8.45 p.m. about 10-12 cars were parked on the road side about 50 meters on the both sides of this shop near Paramjeet Fish Corner, Fun Cinema, main Najafgarh Road, Moti Nagar. Occupants were consuming liquor inside their cars and workers of fish corner were serving 'non-veg' to them in the cars. In this manner, the

applicant being SHO, failed to keep proper supervision over the working of subordinates working under his control.

6. The Disciplinary Authority has carefully gone through the written reply submitted by the applicant and passed the impugned order. The Disciplinary Authority as well as the Appellate Authority provided opportunity of hearing to him on 28.08.2009 in the Orderly Room (OR) and have rightly passed the impugned orders and after following the due process.

7. Virtually acknowledging the factual matrix and the validity of the impugned orders, the respondents have stoutly denied all the allegations contained in the main OA and prayed for its dismissal.

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

9. Having heard the learned counsel for the parties, having gone through the record with their valuable help, we are of the firm view that there is no merit in the instant OA and the same deserves to be dismissed for the reasons mentioned herein below.

10. As is evident from the record that the Disciplinary Authority, after following the due procedure, has passed the impugned punishment order which reads as under:-

“ORDER

A Show Cause Notice for censure was issued to Insp. Jagjit Singh, D-I/785, (PIS No.16810036), SHO/Moti Nagar, HC. Mahender Singh No.2087/West (PIS No.28892944). Ct. Raju Singh, No.1101/W (PIS No.28940377) and Ct. M. A Yadav 1794/W (PIS No.28860245), vide No.873-74/P-III/W, dated 22.01.2009 around Chicken/Fish Corners. During checking of Paramjeet Fish Corner, near to Fun Cinema, Main Najafgarh Road, Moti Nagar, it revealed that from 8.10 PM to 8.45 PM about 10.12 Cars were parked on the road side about 50 mtrs., on the both sides of this Shop. Occupants of these car were consuming liquor inside their Cars and workers of Paramjeet Fish Corner were serving non-veg to them in the Cars. It clearly shows that beat staff of this area namely HC, Mahender Singh No.2987/W, Ct. Raju Singh, No.1101/W and Ct. M.A. Yadav, 1794/W have shown negligence & dereliction in the discharge of their official duty. Likewise, Insp. Jagjit Singh, D-I/785, SHO/Moti Nagar also failed to keep proper supervision over the working of staff working under his control.

I have carefully gone through the written reply submitted by Insp. Jagjit Singh, D-I/785, H.C, Mahender Singh No.2087/W, Ct. Raju Singh, No.1101/W and Ct. M.A. Yadav, 1794/W and all relevant papers available on file. In his reply Insp. Jagjit Singh, D-I/785 mainly pleaded that time & again all the beat staff are being directed to take steps to prevent such activities in their beat. HC, Mahender Kumar, No.2087/W mainly pleaded that he take over the charge of beat from the last 2 months. At the time of checking he was on 1+1 day Casual leave. Ct. Raju Singh, No.1101-W mainly pleaded that on that day he was deputed to cover the PCR calls etc. in whole PS area & Cr. M.A. Yadav, No.1794-W mainly pleaded that on that day he was on duty rest, which are found not satisfactory. The violation of law in full public view is a serious lapse and cannot be tolerated at any stage. Submission made by defaulters are not convincing. Hence Show Cause Notice issued to Insp. Jagjit Singh, D-I/785, HC, Mahender Singh No.2087/W, Ct. Raju Singh No.1101/W and Ct. M.A. Yadav, 1794/W is hereby confirmed. Accordingly, their conduct is hereby censured for the above said lapse.

Let a copy of this order be given to Insp. Jagjit Singh, D-I/785, HC, Mahender Singh No.2087/W, Ct. Raju Singh No.1101/W and Ct. M.A. Yadav, 1794/W free of cost. They can file an appeal against the order to the Jt. CP/SR, New Delhi within 30 days from the date of receipt of this order on a non-judicial stamp paper valued Rs.00.75 by enclosing a copy of this order if they so desire.”

11. Meaning thereby, the Disciplinary Authority has passed the impugned order after considering the matter in the right perspective. The impugned punishment order was upheld by the Appellate Authority.

12. Ex-facie, the argument of learned counsel that since the applicant was not present at the spot on 19.01.2009, when the surprise checking was made at the spot, so no misconduct can be attributed to him, is not tenable. Even the observation of Hon'ble Apex Court in the case of **U.O.I. & Others Vs. J. Ahmed (1979) 2 SCC 286**, is not at all applicable wherein it was held that the deficiency in the personal character or personal ability of a Government servant would not constitute misconduct for taking disciplinary proceedings. There can hardly be any dispute with regard to the aforesaid observation but same would not advance the cause of the applicant in any manner.

13. What cannot possibly be disputed here is that the applicant was posted as overall incharge/SHO of Police Station, Moti Nagar. His conduct was sought to be censured only on the ground of lack of supervision of and proper direction to his subordinate staff to maintain law and order in his area. He, being the SHO, was supposed to personally check and instruct the subordinate staff to maintain law and order as he was the overall incharge of his Police Station.

14. It is not a matter of dispute that Chapter-IV of Delhi Police Act (hereinafter referred to as "the Act") confers power on the police to make regulations for regulating traffic and for preservation of order in public places and to

give directions to the public to maintain law and order. Chapter-VI defines executive duties and powers of police officers. Not only that, Section 28 of the Act, inter alia, posits the power of the police to regulate traffic of all kinds in streets and other public places and to prevent danger/obstruction to the public. Instead of reproducing all the duties and power of the police as envisaged under Section 28, suffice is to state that this section regulates the management of public places, streets and to control all kinds of activities in order to maintain law and order by the police officers. Similarly, Chapter-V deals with special measures for maintenance of public order and security of State.

15. Sequelly, Section 83 of the Act postulates that no person shall cause obstruction in any street or public place by using any part of a street or public place as a halting place for vehicle or cattle, leaving any box, bale, package or other things whatsoever in or upon a street for an unreasonable length of time, or contrary to any regulation and by exposing anything for sale or setting out anything for sale in or upon any stall, booth, board, cask, basket or in any other way whatsoever. Chapter-X deals with removal of such obstruction.

16. Moreover, Section 28(i)(b) of the Act and Circulars read with Regulations 14 and 15 of Regulation of Traffic and other Matters (Delhi Union Territory) Rules, 1959 **cast a**

duty on SHOs and their field staff to keep roads/footpaths etc. clear of all encroachments by hawkers and squatters etc. and also to take firm action against such persons.

17. As per Circular No.26/2010, the police was required to ensure that no encroachment of pathways by shopkeepers either through extending their shops or parking the vehicles be permitted. The circular also provides that the responsibility of local enforcing officials including police may be fixed and action be initiated in the eventuality of default. Similarly, Circular No.27/2007 casts a duty on SHOs to maintain law and order in their respective areas.

18. According to Section 41 of the Criminal Procedure Code, 1973 (for brevity “Cr.PC”) any police officer may without an order from Magistrate and without a warrant may arrest any person against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence. Chapter XII of the Cr.PC postulates receipt of information by the incharge of Police Station (SHO) and his power to investigate and take appropriate action in the matter in accordance with law.

19. Therefore, a plain and meaningful reading of the provisions/scheme of the Act and Cr.PC reveals that it was mandatory for the SHO and local police to take effective steps to prevent/remove encroachments from street/public

places and to take effective appropriate legal action to prosecute the violators and offenders in this regard.

20. As per reply to the SCN submitted by the applicant, it has nowhere been mentioned that he has taken cognizance of the commission of non-cognizable offence of drinking in public places by the offenders or has recorded Calendra (Kalandra) for causing obstruction in public street or has performed any supervisory duty as contemplated in the indicated legal provisions. His vague explanation is that he used to brief subordinate staff daily, *ipso facto*, is not a ground, much less a cogent one to exonerate him of the charge, as urged on his behalf.

21. Sequelly, non-supply of the alleged inspection report *pales into insignificance* and would not invalidate the impugned orders in any manner because the applicant himself admitted in para 4 of his statutory appeal (Annexure A-4) and in para 5.9 of OA that the activities of drinking on public place by the offenders sometimes get aggravated due to the presence of Government liquor vend, which is only a shop away from fish eating joint and generally people stop their vehicles on the road and go for purchasing the liquor. In other words, he has admitted the happening of the instances of drinking liquor on public place by the offenders. Therefore, it was his independent wisdom and duty to prevent such incidents in the manner he liked, in which he has utterly failed. Even he has not

registered any criminal case or Calendra (Kalandra) during the relevant period against the offenders (emphasis supplied) under the relevant provisions of law. In this manner, he has miserably failed to perform his duties of incharge/SHO of the Police Station.

22. Therefore, the Disciplinary Authority has rightly Censured the conduct of the applicant and the Appellate Authority has recorded valid reasons to dismiss his appeal. The Disciplinary as well as Appellate authority 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 by this Tribunal.

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

24. In the light of the aforesaid reasons and thus seen from any angle, there is no merit in the OA. Hence it deserves to be and is hereby dismissed as such in the obtaining circumstances of the case. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh