

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.4338/2013

Order Reservedon: 13.12.2016

Order pronounced on:15.12.2016

**Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Mr. Nabab Singh (Head Constable)
PIS No. 28824136
S/o ShriLekhraj Singh
R/o G-87 A, Lajpat Nagar,
Jawahar Colony, NIT,
Faridabad 121001. .. Applicant

(By Advocate: Sh. SaurabhBhargavan)

VERSUS

(1) The Commissioner of Police
Police Headquarter,
I.P. Estate, New Delhi.

(2) Govt. of NCT of Delhi
Through Chief Secretary
Players Building
I.P. Estate, New Delhi. .. Respondents

(Advocate: Ms. Rashmi Chopra)

O R D E R

ByUday KumarVarma, Member (A): -

This OA has been filed by the applicant seeking following relief(s): -

"(A) Set aside the impugned order dated 06.06.2013 (Annexure P-1) passed by the respondent No.1/Appellate Authority, Joint Commissioner of Police, South Eastern Range, Delhi;

- (B) Set aside the impugned order dated 24.07.2012 (Annexure P-2) passed by the respondentNo.1/Disciplinary Authority, Addl. Deputy Commissioner of Police, South-East District, New Delhi;
- (C) Pass any order/relief/direction(s) which the Hon'ble Tribunal may deem fit and proper in the interest of justice and in the favour of the applicant."

2. The brief facts of the case as presented by the applicant are that a case vide FIR No.85. /2010 dated 24.03.2010 under Section 279/338 IPC was registered at P.S. SangamVihar,wherein oneArif S/o Rais Ahmed, R/o Surya Vihar, Faridabad, Haryana was hit while he was going on a motorcycle on 23.03.2010. The injured was declared unfit for statement as he sustained grievous injury. The applicant, Head Constable Nabab Singh was the Inquiry Officer of the case and he was entrusted withthe task of investigation. During the course of investigation, the applicant/IO in his investigation report stated that the eyewitnesses revealedthat the motorcycle was hit by a Tractor carrying a water tanker but the registration number of the Tractor was not told by witnesses to the Applicant/IO. The case was sent as untraced by the Applicant/IO, which was duly forwarded by the SHO/SangamViharto ACP/Ambedkar Nagar on 13/05/2010.However, the victim/injured was not informed

regarding the final conclusion of the investigation. Applicant/IO kept the untraced case file with himself and also, did not deposit the same in the concerned court immediately.

3. The family of the injured person met the ACP in Charge of Police Station and complained against improper inquiry made by the applicant. On re-investigation, the applicant again recorded supplementary statement on 04.06.2010 of Mohd. Arif s/o Master Sabbir (eye-witness) and during the recording of supplementary statement, the details pertaining to the ownership of the offending water tanker/tractor surfaced. Thereafter, the MACT Judge, Saket before whom this case in FIR No.85/2010 came up for hearing expressed some doubt/suspicion on the investigation done by the applicant and directed the DCP (South-East) to inquire into the matter. An enquiry was conducted following due procedure and eventually, the applicant was given punishment of withholding of his next increment for a period of two years with cumulative effect. His appeal was also rejected.

4. The applicant has given the following grounds in support of his contention that punishment order against him is wrong in law:

- i. Firstly, the respondents ignored the fact that none of the Prosecution Witnesses (PWs) are aware of the registration number of the offending vehicle till date;
- ii. Secondly, the respondents ignored the admissions of the PWs that they had come to know of the name of the owner of the offending vehicle/tractor only on 03/04.06.2010;
- iii. Thirdly, the supplementary statement recorded on 04.06.2010 by the applicant/IO of the eye-witness/others with additional facts regarding name of the owner of the offending tractor/water tanker are new facts surfaced only at the time of recording the supplementary statements;
- iv. Fourthly, the applicant/IO was never informed by the PWs the identity of the owner of the offending Tractor and, therefore, the statement recorded initially on 24-25/03/2010 did not mention the name of ShriMonu (alleged owner) and ShriBhola (driver);
- v. Fifthly, the respondents ignored the fair investigation done by the applicant/IO as per list

of dates of investigation (Annexure P-3) in the FIR 85/2010;

vi. Sixthly, respondents did not properly weigh and consider on merits the defense statement and representation against the findings of E.O.

vii. Seventhly, respondents ignored the fact that eyewitness admitted that he came to know about Mr. Monu (Owner of Tractor) only on 03.06.2010 and hence, in his supplementary statement these facts were newly mentioned.

viii. Eighthly, the applicant had undoubtedly proved that prior to 03/04.06/2010, it was not in the knowledge of any PW that Mr. Monu was the owner of the tractor and water tankers. In other words, the crux of applicant in his defense is that he was not told by anyone about the ownership or registration numbers of the offending vehicles in the initial investigation and therefore he prepared the no trace report.

5. The respondents on the other hand have filed a detailed written statement and have largely relied on the inquiry report submitted by the Inquiry Officer which has recorded in detail the whole sequence of events, the

discussion, the evidence given by the witnesses from both sides, analyzing the discussion of evidence and eventual conclusion that states that the charge served upon the applicant is proved without any shadow of doubt. It is also pointed out by the respondents that MACTcourt in its order dated 25.09.2010 has clearly observed that there is difference in writing in the statement recorded on 23.5.2010. This statement is of eye witness Shri Arif S/o Master Sabbir. According to the statement, the witness has not given details of the offending vehicle nor its registration number. But on a subsequent date i.e. on 04.06.2010, he has given the above details. The Judge directed the DCP (South-East) Delhi to inquire into the matter and called for a report. It was argued on behalf of the respondents that two charges, i.e., not informing the complainant about 'No Trace' report and not placing the same before the court are not disputed by the applicant. They have also submitted that the inquiry officer has also clearly held that the applicant had acted with ulterior motive while adding the words "*Mein tractor ka Number nahijanta*" in the statement recorded by Arif s/o Master Shabbir on 23.5.2016 which seems to have been written from different pen.

6. We have heard the counsel for both the parties attentively, perused the documents on record and given our thoughtful consideration to the matter.

7. Respondents have claimed that the major ground for concluding that the charges stand proved and thus imposing punishment on the applicant is that he did not inform the complainant about 'No Trace report' and also for not submitting the 'No Trace' report to the concerned court. These facts are not disputed by the applicant. The accident had taken place on 23.03.2010 and on 13.05.2010 itself, the applicant had decided that the vehicles number (Tractor and Water Tanker) that were involved in the accident could not be traced. It is quite apparent that the applicant had prepared 'No Trace' report on the ground that no witness informed him about either the owner or the registration number of the concerned vehicle. However, there is nothing on record to establish that any other effort was made by him to trace the owner of the vehicle or the vehicle number. Once the complainant met the ACP in charge of that area on 3rd June 2010, the applicant again started investigating the matter and was able to get from the witnesses necessary information. The applicant vehemently argued that before filing 'No Trace' report, none of the witnesses gave him

any clue about the ownership or registration number of the vehicle alleged to have hit the motorcycle of Mohd. Arif, S/o Rais Ahmed, and, therefore, he had no option but to file 'No Trace' report. He has however, not been able to explain the entry "*Mein tractor ka Number nahijanta*" - made in a different ink in the statement made by Mohd. Arif, S/o Master Sabbir. He has not been able to convincingly establish that it was not an entry made after the evidence was recorded. Similarly, the applicant had not been able to establish any other effort made by him to trace the owner of the vehicle or registration number of the vehicles except for relying on the statement of one Mohd. Arif, S/o Master Sabbir. It is also not clear why the statement of the injured, once he was in a position to give the same were not recorded. He took just one and half month time without conducting any inquiry whatsoever himself, to come to the conclusion that the offending vehicles or their owners could not be traced.

8. The respondents on the other hand, have invited our attention to the detailed inquiry report and tried to convince us that the inquiry was conducted in a proper manner and the fact that the applicant prepared 'No Trace' report without conducting any inquiry and also by tampering with the evidence of a witness's statement

dated 25.03.2010, has committed a misconduct for which he has been rightly punished.

9. The case law on the scope of interference by the Tribunals and the High Courts has been largely settled by the many judgments of the Apex Court. The Tribunals are not supposed to re-appreciate the evidence placed before the Enquiry Officer. Unless there is a gross violation of Principles of Natural Justice while conducting the enquiry or a major and material error in following proper procedure during the enquiry, or the quantum of punishment imposed being shockingly disproportionate to the gravity of misconduct, Tribunals have been advised not to interfere in the departmental proceeding matters.

The Hon'ble Apex Court in the case of **S.R.Tewari v. Union of India** (2013(7) Scale Page 417) has reiterated that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or

the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review".

10. It is our considered view that in the instant case there has been no violation of Principles of Natural Justice as proper opportunity has been afforded to the applicant in the course of enquiry. There is no deficiency as far as the procedural aspects of the enquiry are concerned and likewise the punishment imposed is also not disproportionate to the misconduct of the applicant. As a matter of fact, in this OA, the applicant has not taken any of the above grounds to challenge the punishment order.

11. Recently, the Hon'ble Apex Court in the case of **Union of India versus P.Gunasekaran** (2015 (2) S.C.C. Page 610) in paras 12, 13 & 20 has held as follows: -

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) into the proportionality of punishment unless it shocks its conscience.

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19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, impeccability, rectitude, uprightness, virtuousness, righteousness, goodness, cleanliness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence

etc. In short, it depicts sterling character with firm adherence to a code of moral values."

12. The guidelines enunciated in the judgment above are as relevant and useful for adjudication of Departmental Proceedings for Tribunals as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of **P.Gunasekaran**(supra), we cannot fail but conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunal.

13. Given the aforementioned facts and circumstances, the instant OA is bereft of merit. Resultantly, it deserves dismissal and is accordingly dismissed. There will be no order as to the costs.

(Uday Kumar Varma)
Member (A)

(V. Ajay Kumar)
Member (J)

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