

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 3888/2013

Hon'ble Mr. P.K. Basu, Member (A)

Reserved on: 23.01.2017
Pronounced on: 25.01.2017

Inspector Brijesh Namboori,
No. D/2985 (PIS No.16900031)
4th Bn. DAP,
Kingsway Camp, New Delhi

...Applicant

(Through Shri Gyanendra Singh, Advocate)

Versus

1. The Commissioner of Police
PHQ, MSO Building,
ITO, I.P. Estate, New Delhi
2. The Dy. Commissioner of Police
North East District
Delhi
3. The Joint Commissioner of Police
South Eastern Range, Delhi

.... Respondents

(Through Ms. Sangeeta Tomar, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was issued a Show Cause Notice (SCN), which is reproduced below:

"An explanation of Inspr. Brijesh Namboori, No.D/2985 was called vide this office No.10551/HAP/NE dated 22.12.2010 for his grave misconduct, negligence, carelessness and dereliction in the discharge of his official duties in that on

perusal of case FIR No.287/10 dated 19.12.2010 u/s 326/34 IPC PS Karawal Nagar, the undersigned observed that the occurrence of incident took place on 13.09.2010 and was reported in the Police Station on 14.09.2010 but the case has been registered on 19.12.2010 after lapse of 3 months and 05 days with the reason that the complainant could not give the statement for the registration of the case which is not acceptable, feasible and does not seem to be realistic. This is clear cut violation of instruction issued by senior officer to register the case as and when it is reported without any delay and the investigation be carried out.

The U.O. for explanation was served upon him. He has submitted his written reply in response to explanation. I have perused the reply submitted by Insp. Brijesh Namboori, No.D/2985 and heard in orderly room. The reply submitted by Inspector is not found satisfactory.

The above act on the part of Insp. Brijesh Namboori, No.D/2985 amounts to grave misconduct, negligence and carelessness in discharge of official duties.

He is, therefore, called upon to show cause as to why his conduct should not be censured for this lapse. His reply, if any should reach this office within 07 days from the date of receipt of this notice failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex parte on merit."

2. The applicant submitted his written reply to the SCN. He was also heard in Orderly Room. The Disciplinary Authority (DA) passed order dated 5.05.2011, confirming the SCN and 'censuring' the conduct of the applicant. The applicant filed an appeal before the Appellate Authority (AA), which was rejected vide order dated 23.10.2012. The applicant is aggrieved by these orders and has filed the OA seeking the following reliefs:

A. Quash and set aside the Impugned Appellate Order No.3764-68/SO/SER(AC-II) New Delhi, dated 23.10.2012, whereby the appeal of the

applicant has summarily been rejected by the Appellate Authority.

- B. Quash and set aside the Impugned Disciplinary Authority Order F.XVI/525/2010/6339-49/HAP/NE (P-I) dated Delhi 5.05.2011, whereby the penalty of censure was confirmed upon the applicant by a non-speaking order, even without appreciating and disposing of the contentions raised by the applicant in his reply to the show cause notice dated 10.03.2011.
- C. Quash and set aside the show cause notice No.3340/HAP/NE(P-I) dated Delhi, the 10.03.2011.

3. The facts of the case, briefly, are that on 13.09.2010, one Monu was assaulted by some boys and one of them, in fact, attacked him with a pair of scissors. He was taken to the GTB hospital on 14.09.2010. The DD entry No.48-B dated 14.09.2010, annexed with the OA, states that after receiving the Medico-Legal Certificate (MLC), the Head Constable visited the room in which Monu was being treated and it was his conclusion that cognizable offence was not made out as per the statement of the injured. The MLC had been deposited for the nature of injuries and further proceedings were to be taken as per the report of the MLC. It is further stated that the SHO (Applicant) was also informed. According to the FIR, the final medical report was handed over to ASI Habib Ahmed on 27.09.1990. FIR under Section 326/34 IPC was registered on 19.12.2010 i.e. with a delay of about three months and five days. The DA came to the conclusion that the applicant did not take prompt action to register the case. The provision under Section 154 Cr.PC casts a duty upon the police to register a case forthwith when an information relating to commission of a cognizable offence is

received at the police station, which was not done in this particular case. In fact, in his appeal dated 7.06.2011, the only reason cited by the applicant is that the ASI Habib Ahmed got the MLC after a delay of about three months and, therefore, the FIR could only be lodged on 19.12.2010.

4. Learned counsel for the applicant put forth the following arguments:

- i) The SCN itself shows that the DA had already made up his mind that the applicant had committed misconduct, negligence and carelessness in discharge of his official duties, even without any reply from him;
- ii) The Investigating Officer (IO), who visited the hospital for the statement of the injured, was primarily responsible to make sure that the FIR is lodged in time but no action was initiated against the IO;
- iii) The AA has not passed a detailed order taking note of the points that had been raised by the applicant in his appeal. In this connection, my attention is drawn to ground (E), where the following has been pointed out by the applicant:
 - (a) It is submitted that on 14.09.2010, information was received as to injury of injured, IO was sent vide DD entry No.14-A dated 14.09.2010

to attend the injured/ victim for taking necessary action.

(b) On the arrival of Head Constable Jeeva Nand DD Entry No.48-B dated 14.09.2010, mentioned that he visited the injured and MLC of the injured was collected in which the doctor opined that the result of injury under observation as blunt, therefore, the same was deposited in GTB Hospital for getting the final results of the injuries. Thus, no cognizable offence was made out due to which he had to wait for the result of MLC.

(c) Later on the call was marked to ASI Habib Ahmed on 27.09.2010, who has recorded the statement of the injured on 1.10.2010. The injured stated that he was not aware of the names of the accused but now he came to know them and even more could recognize them, if they are produced in front of him. Resultantly, he did not give his statement earlier to the police.

iv) It is the complainant who refused to lodge an FIR initially and only after getting the MLCs regarding nature of injuries, the FIR could be lodged.

5. Learned counsel for the applicant relied on the order of this Tribunal in OA 2346/2011, **Sanjiv Gupta Vs. Government of**

NCT of Delhi and others, specifically to the following observations in para 4 and 5 :

"4.Insofar as the disciplinary authority is concerned, as mentioned above, it would not discuss, and by a process of reasoning, reject the defence project by the applicant. Insofar as the appellate authority is concerned, it felt satisfied by simply observing that having heard the applicant no justification was found for the delay caused in registration of the FIR. This is no way to do administrative justice..... We may only mention at this stage that the Hon'ble Supreme Court in State of Uttar Pradesh v Raj Pal Singh [(2010) 5 SCC 783] has held that different punishments to different delinquents in respect of same delinquency, would be discriminatory.

5.the law that has evolved is that overall service record of an officer is relevant for the purpose of his promotion. That being so, while proposing to visit a police officer with the penalty of censure, the concerned authority is to give serious thought."

6. The learned counsel for the respondents stated that in accordance with Section 154 of the Cr.PC, FIR in case of a cognizable offence has to be filed immediately and the delay as in the present case, clearly shows misconduct on the part of the applicant. The FIR states that the injury was grievous. Therefore, there was no question that the applicant could even claim that he had to wait for three months to get the MLC.

7. The learned counsel for the respondents also referred to order of this Tribunal in OA 4134/2013, **Inspector Vijendra Pal Vs. GNCT of Delhi and others** dated 1.07.2015 in which, in a similar case in delay in registration of FIR, the Tribunal extensively discussed the provisions of Sections 154 and 157 of

the Cr.PC as also judgments of the Hon'ble Supreme Court as well as Standing Order No.145 dated 12.03.1980 of the Commissioner of Police, Delhi that it is not even necessary that the information must be given by the person aggrieved by the commission of the offence, himself. As soon as the information is given, it should be recorded without waiting for the appearance of the aggrieved party.

8. I have heard the learned counsel for the parties, gone through the pleadings available on record and perused the orders cited.

9. I do not accept the argument that the SCN shows that the DA had prejudged the issue without looking at the reply of the applicant to the show cause. The very fact that the applicant was issued SCN, establishes that the DA had an open mind and he wanted to take a decision only after the reply of the applicant to the SCN. In fact, the applicant was also heard in Orderly Room. There was no option for the DA as the law and instructions are crystal clear that FIR has to be lodged immediately. Just by saying that the complainant did not register the FIR as the MLC was not available, was correctly held by the DA as unacceptable. In any case, the grievous stab injury could not have been missed by the applicant.

10. As has been held clearly in the order in Inspector Vijendra Pal (supra), the responsibility is squarely on the police to lodge the FIR immediately. No excuses are acceptable. Whether the IO was held responsible and punishment awarded to him is, in

my opinion, not relevant. The applicant as the SHO of the police station had the sole responsibility to ensure compliance of law and instructions, himself as well as by his subordinates.

11. It is incorrect on the part of the applicant to take the plea that the points mentioned by him in his appeal and reiterated in ground (E) were not taken note of by the AA. The sum and substance of his explanation is that the FIR could be lodged after a delay of three months because the nature of injuries could not be decided unless the hospital gave the final MLC. Rest is irrelevant. And on this issue, the AA has clearly stated that the explanation was not acceptable, feasible and does not seem to be realistic and it was a clear-cut violation of the instructions.

12. As regards applicant's reliance on Sanjiv Gupta (supra), I have already explained why I have not held that there was no application of mind on the part of the AA. On the ground raised by the applicant that there is discrimination as the applicant has been singled out whereas the IO has been let-off, I have explained the reason why the applicant should be held responsible.

13. In view of the above, I do not find any defect in the disciplinary proceedings conducted by the respondents. If at all, the DA and the AA have been rather lenient in awarding the punishment of 'censure' on the applicant. This OA appears to have been filed by the applicant on some misplaced

understanding of his duties and responsibilities as a SHO. It is, therefore, dismissed with no order as to costs.

(P.K. Basu)
Member (A)

/dkm/