

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

OA 4053/2013

Reserved on: 28.09.2016
Pronounced on: 4.10.2016

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

Insp. Vijendra Pal
Inspr. No.D-1/374, PIS
S/o Shri Ram Richpal Sharma
R/o 143, Arthla, Mohan Nagar,
Ghaziabad, UP-201007

... Applicant

(Through Shri Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
Through Commissioner of Police
Police Head Quarters,
IP Estate, MSO Building
New Delhi
2. Joint Commissioner of Police
South Eastern Range
Through Commissioner of Police
Police Head Quarters,
IP Estate, MSO Building
New Delhi
3. Deputy Commissioner of Police,
North East District
Through Commissioner of Police
Police Head Quarters,
IP Estate, MSO Building
New Delhi

... Respondents

(Through Ms. Sumedha Sharma, Advocate)

ORDER

The applicant was posted as Station House Officer (SHO) at police station South Rohini. He was issued Show Cause Notice (SCN) for 'Censure' along with SI Manwar Patwal dated 14.05.2010. The contents of the SCN are as follows:-

"The complainant Deepak Kumar, S/o Shri Gurdyal Singh, R/o E-20/156, Sector - 3, Rohini, Delhi had complained of local police in action in his complaint made for an incident which took place at the night of 23.08.2009. In this case, the complainant along with his nephew Manoj Kumar while riding a Motor cycle were hit by a rushing car No.DL-8CM 5624. Thereafter, the four occupants of the car started beating to the complainant and his nephew and snatched gold chain and money of the complainant. On seeing the nephew being down with the beatings, all the four fled away from the scene. The complainant's nephew having received head injuries was taken to Avantika Hospital. The complainant was also taken to Dr.BSA Hospital by CAT Van. MLC results of both were taken by the I.O. S.I. Manwar Patwal No. D-652 of PS Rohini South. The I.O. had also traced the name and address of the car owner but instead of registering the FIR, the I.O. forced the complainant to enter into a compromise with the accused. The complainant again met the SHO/ Sector-3, Rohini and requested in writing to initiate the legal action against the accused on 1.09.2009 which he failed to do and asked the complainant to enter in a compromise deal with the accused.

A vigilance enquiry was conducted which has revealed that the car of the alleged persons had only touched the Motor Cycle which reversing but there was no accident as such. The boys belonging to both parties were consuming liquor at that place and subsequently they quarreled. The complainant and his brother were medically examined and on receipt of MLC result a case FIR No.623/09 u/s 323/324/34 IPC PS Rohini South was registered on 18.12.2009. No incident of chain and money snatching is found to have taken place as none of the 3 eye witnesses supported the version of the complainant. On perusal of the Vigilance enquiry report, the Special C.P./ Vigilance & worthy C.P. Delhi have passed the following remarks which are reproduced below:-

Remarks of Special C.P. Vigilance

"However, there is an unexplained delay of four months in registering the case. The explanation of SHO that it was a procedural delay in untenable. DCP/O.D. may be asked to issue a SCN for Censure to the IO and SHO for delayed registration of the case. Since the complainant has alleged biased attitude of the IO, it would be appropriate to transfer the case to another IO for fair investigation".

Remarks of C.P. Delhi

"Approved, however, case be transferred to DIU."

In view of the above, there is an unexplained delay of 4 months in registering the case on the above said complaint. The complainant has also alleged biased attitude of the I.O. This shows that the S.I. Manwar Patwal No.D-652 has erred in discharging of his official duty which is a serious lapse on his part. Moreover, Inspr. Vijender Pal, No.D-I/374, SHO/ South Rohini failed in his duty to issue proper directions to the I.O. on the subject matter which reflected unprofessionalism casual approach in the discharge of his official duties."

This was a minor penalty proceeding.

2. The disciplinary authority considered the written reply of the applicant and also heard him personally in the orderly room and confirmed the penalty of 'Censure' vide order dated 26.02.2011. An appeal was filed by the applicant against the order of the disciplinary authority and the appellate authority rejected it vide order dated 1.10.2012. Being aggrieved by these orders, the applicant has filed this OA seeking the following reliefs:

"(a) Quash and set aside the impugned orders mentioned in Para 1 of the OA (i.e. Show cause notice dated 14/05/2010, Order of censure dated 26/02/2011 and appellate authority's order dated 01/10/2012) and

accord the Applicant with all consequential benefits viz. promotion, seniority etc. And

(b) Award cost in favour of the Applicant and against the respondents. And/or

(c) Pass any further order, which this Hon'ble Tribunal may deem fit, just equitable in the facts and circumstances of the case."

3. The learned counsel for the applicant argued that when the incident took place, the concerned complainants were taken for medical examination. One of the complainants, Shri Deepak Kumar had a minor injury and the other complainant, Shri Manoj Kumar suffered a grievous injury but the doctor made the medical report only on 15.12.2009. On receipt of the medical report, the FIR was lodged on 18.12.2009. It is contended that, therefore, there was no delay on the part of applicant as alleged in the charge.

4. It is further argued by the learned counsel for the applicant that, though the complainant states that he had met the applicant on 1.09.2009 in the police station, this is a false statement as he was on leave on that day. In support of this, the applicant has filed the daily diary entry dated 29.08.2009, which is as follows:-

"At 2.05 PM, I am proceedings on C.L. 2+1 w.e.f. 31.8.09 sanctioned by Worthy DCP/OD. As per order SHO/Mangol Puri will look after the job of SHO/Rohini during my leave. By Self."

The applicant has also filed daily diary entry of 2.09.2009, which is as follows:-

"At 8/20 PM, I reported back from C.L. vide DD No.18A, dt.29/8/09 and depart to attend Court along with Operator Ct.Kanak Bhusan, 1043/OD, Driver Ct.Praveen, 1745/OD & Govt. Vehicle No.DL-1LC-4866. By A/C."

5. It is stated that the above would establish that the applicant went on three days CL and returned only on 2.09.2009. Therefore, the statement of the complainant is false.

6. It is further stated that the disciplinary authority in his order has recorded that the action of the applicant shows lack of supervision on his part, callous and slack attitude to hush up the case and not take legal action. It is submitted that in the SCN, these charges were not included and, therefore, the disciplinary authority has come to its conclusion based on facts which were not included in the SCN. In this regard, he relied on the judgment of the Hon'ble Supreme Court in **M.V. Bijlani Vs. Union of India and Others**, 2006 SCC (L&S) 919) with specific reference to para 23 of the judgment which reads as follows:

"23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounts to misutilisation of copper wire."

7. It is further stated that in his representation to the appellate authority dated 5.04.2011, the applicant had raised the issue that he was not present at the police station on 1.09.2009 and that since the doctor had not given a concrete result on the MLC, he had no option but to keep the matter pending as Section 323 IPC is non-cognizable. However, in the order of the appellate authority, these points raised by him were not discussed at all. Rather the appellate authority mentions that the complainant again met the applicant on

1.09.2009. It is argued that this would make it clear that the appellate authority had not gone through the appeal preferred by the applicant though he states in his order that he has gone into the appeal petition. It is stated that this would further indicate that the appellate authority had passed the order without application of mind. It is also stated based on daily diary entry no. 7A of police station South Rohini that the injured person Manoj Kumar went for CT scan on the day of the incident i.e. 23.08.2009 but was not available in the hospital and, when contacted, he refused to give his statement and ultimately stated that he will give his statement only before the Vigilance and not before the Inquiry Officer (IO). This entry also states that all the facts were apprised to the SHO in this regard.

8. It is also argued that the remarks of the Special CP/Vigilance in the SCN would clearly show that he had directed the disciplinary authority to issue show cause for 'Censure' to both the IO and the SHO for delayed registration of the case. It is, therefore, alleged that the disciplinary authority was acting under the dictat of his superior which vitiates the proceedings. In this regard, reliance is placed on the judgment in **Ex. Constable R.S. Shekhawat Vs. Union of India & Ors.**, 150 (2008) Delhi Law Times 450 (DB).

9. Learned counsel for the respondents stated that there was a delay of about four months in registration of FIR under Section 323/324/34 IPC. The reason given for delay by the applicant was that the doctor who had examined the complainant had left India on that very day and returned only after four months and thereafter,

the FIR was quickly lodged on 18.12.2009. It is stated that it is the duty of a police officer to get the injured medically examined. Even if it is accepted that the concerned doctor went abroad and returned only after four months, in the same hospital there would have been other doctors available who could be contacted immediately to get the medical examination done.

10. It is further argued that SHO is the supervisory officer of the IO and in the SCN itself it has been mentioned clearly that Inspector Vijender Pal, SHO South Rohini failed in his duty to issue proper directions to the IO on the subject matter, which reflected unprofessionalism and casual approach in the discharge of his official duties. Therefore, M.V. Bijlani (*supra*) would not be applicable in this case.

11. It is settled law that the Tribunal shall not get into re-appreciation of evidence. In fact, the only issue where there seems to be an error on the conduct of the appellate authority is not to consider the fact pointed out by the applicant in his appeal that he was on casual leave on 1.09.2009 and was not present in the Thana. However, this does not vitiate the proceeding at all because even if this contention of the applicant is accepted, it has been proved beyond any doubt in the inquiry that there was a delay of four months in registration of FIR. The only ground taken by the applicant for delay is that the doctor who examined the complainant, went abroad the same day for some urgent work and came back only after four months, which argument is frivolous and has to be rejected.

12. I am also satisfied that the applicant cannot pass on the buck to the IO because he is the supervisory officer and had been kept informed by the IO of the events.

13. On the question of disciplinary authority acting on the dictat of his superior officer i.e. Special C.P. (Vigilance), it will be clear from the remarks of the Special CP in the SCN itself that the disciplinary authority did not act on his dictat, rather the facts of the case make it crystal clear that there was a delay of four months in lodging the FIR and that is the ground why the disciplinary authority issued the SCN for 'Censure' and based on the vigilance inquiry, which was conducted and the findings of which were as follows:

- "1. An incident of assault had occurred.
2. The complainant suffered injuries in person.
3. The alleged accused were traced & apprehended.
4. But despite that no legal case was registered, merely a compromise was got done.
5. Had been the matter compromised by the complainant, he would have lodged complaint and referred the matter to vigilance unit. It amply shows that compromise was fake and not without his consent. Further police cannot be party to compromise. His role is to take legal action as per the facts of the incident."

Therefore, the judgment cited by the applicant in Ex. Constable R.S. Shekhawat (supra) does not apply.

14. From the above discussion, it would be clear that the disciplinary authority and the appellate authority have considered full facts of the case, examined the applicant's reply, given him opportunity to be heard in orderly room and thereafter come to the

conclusion that there was failure on the part of the applicant to supervise the IO's work carefully and that his attitude was callous and slack to hush up the case and not take legal action. It is, therefore, felt that there is no illegality or irregularity in the action taken by the respondents in issuing SCN dated 14.05.2010 and in the orders passed by the disciplinary authority and the appellate authority. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

/dkm/