

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. No.3813/2013**

**New Delhi this the 22<sup>nd</sup> day of August, 2016**

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)**

**HON'BLE MR. V.N. GAUR, MEMBER (A)**

Inspector Vijendra Pal  
Inspector No.D-I/374, PIS 16810018  
S/o Shri Ram Richpal Sharma  
R/o 143, Arthla, Mohan Nagar,  
Ghaziabad, UP-201007  
Presently posted at Outer District,  
Group 'B', Aged 56 years. ....Applicant

(Argued by: Mr. Sourabh Ahuja)

Versus

1. GNCT of Delhi  
Through Commissioner of Police,  
Police Head Quarters,  
I.P. Estate, MSO Building,  
New Delhi.
2. Joint Commissioner of Police.  
Northern Range,  
Through Commissioner of Police,  
PHQ, I.P. Estate, MSO Building,  
New Delhi.
3. Deputy Commissioner of Police,  
Outer District,  
Through Commissioner of Police,  
PHQ, I.P. Estate, MSO Building,  
New Delhi. ....Respondents

(By Advocate : Ms. Sumedha Sharma)

**ORDER (ORAL)**

**Justice M. S. Sullar, Member (J)**

The crux of the facts and material, relevant of deciding the present Original Application (OA), filed by Inspector Vijender Pal, the then SHO, South Rohini, and emanating from

the record is that, one complainant, Shri S.C. Goel R/o 38, Mitra Vihar, Pitam Pura, Delhi, appeared before the then DCP, Outer District on 16.01.2010 along with a written complaint regarding inaction on the part of applicant (SHO) and SI Manwar Patwal (IO) in case vide FIR No.347/2009 u/s 420 IPC of Police Station, South Rohini. Thus, they were stated to have committed grave misconduct in performance of their official duty.

2. As a consequence thereof, the applicant and SI Manwar Patwal were served with the following impugned Show Cause Notice (SCN) dated 02/03.08.2010 (Annexure-1):-

“An explanation calling notice was issued to Inspr. Vijender Pal, No. D-I/374 and SI Manwar Patwal, No. D/652 vide this office No. 4351-53/HAP/Outer Distt. Dated 3.5.2010 on the allegations that one Sh. S. C. Goel R/o. 38, Mitra Vihar, Pitam Pura, Delhi had appeared before the then DCP/Outer Distt. on 16.1.2010 alongwith a written complaint regarding in action on the part of SHO/South Rohini and SI. Manwar Patwal, I.O. of case FIR No. 347/09 u/s 420 IPC, PS South Rohini. He further alleged that he also met SHO/South Rohini and SI Manwar Patwal 2-3 times but his grievances have not been redressed.

The case file of FIR No. 347/09 u/s. 420 IPC, PS South Rohini was perused in which I.O., SI Manwar Patwal, No. D/652 and Inspr. Vijender Pal, No. D-I/374, SHO/South Rohini were found unable to explain the case file and locate the addresses of the accused and his wife. They were unaware of the fact that the accused of this case and his wife have mobile with them. They have not tried to get call details and contacts of the relatives and other persons in the convenient way. Now, both the I.O. and SHO are trying to make the accused persons P.O. rather than trying to trace them. This indicates that either the I.O. SI Manwar Patwal and SHO/South Rohini are intentionally trying to manipulate the case or they are not working properly.

A copy of above explanation notice was duly served upon Inspr. Vijender Pal, SHO/South Rohini and SI Manwar Patwal, No. D/652 against their proper receipt on 13.05.2010 but they did not bother to submit his reply to the explanation despite issuance of 02 reminders vide No. 4919-20/HAP/Outer Distt. dated 21.5.2010 and 5884-85/HAP/Outer Distt. dated 11.06.2010. This indicates that both SHO/South Rohini and SI

Manwar Patwal, No. D/652 are deliberately avoiding reply to the explanation notice and they have no plausible explanation for the alleged lapses on their part. Hence, this SCN for not responding reply to the explanation notice and lapses on their part as mentioned in the explanation notice.

The above act on the part of Inspr. Vijender Pal, No. D-I/374 and SI Manwar Patwal, No. D/652 amounts to gross negligence, carelessness, disobedience and dereliction in the discharge of their official duty.

They are, therefore, called upon to show cause as to why their conduct should not be censured for the above said lapse. Their replies, if any should reach the undersigned within 07 days from the receipt of this SCN failing which it would be presumed that they have nothing to say in their defence and the matter will be decided ex-parte on its merit”.

3. Applicant neither acknowledged the SCN nor filed any reply to explain his conduct. In view of non filing of reply and taking into consideration the total failure and non supervision, the conduct of the applicant was Censured by way of impugned order dated 31.03.2011 (Annexure-2) by the Disciplinary Authority.

4. Likewise, the appeal filed by the applicant was dismissed, by means of an impugned order dated 01/04.10.2012 (Annexure-3) by the Appellate Authority (AA) as well.

5. Aggrieved thereby, the applicant has preferred the instant OA to challenge the impugned SCN and orders on various pleaded grounds.

6. The respondents refuted the claim of the applicant and filed the reply. Virtually acknowledging the factual matrix and reiterating the validity of the impugned SCN and orders, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

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

8. As indicated hereinabove, the applicant has challenged the impugned SCN and orders on various grounds mentioned therein, but during the course of arguments, the learned counsel for applicant has confined his argument only to the extent of non-application of mind while deciding the statutory appeal filed by the applicant by the AA.

9. At the very outset, learned counsel has contended with some amount of vehemence, that the conduct of the applicant was Censured on account of total failure and non-supervision of a criminal case in FIR No.347/09 u/s 420 IPC while he was posted as SHO in Police Station, South Rohini. In this regard, he has placed on record the copy of FIR No.347 dated 13.07.2009 u/s 379 IPC (Annexure A-6 Colly.) lodged by complainant Mukesh Kumar Khurana S/o Arjun Dass Khurana in PS Rohini [not the FIR No.347/2009 recorded by complainant Shri S.C. Goel u/s 420], as relied upon by the DA. Thus, he urged that the DA proceeded on wrong premises of FIR No.347 of 2009 allegedly recorded by the complainant Shri S.C. Goel u/s 420 IPC, whereas, in fact, the actual FIR No.347/2009 was lodged by complainant Mukesh Kumar Khurana u/s 379 IPC.

10. Sequelly, the contention of the learned counsel for the applicant that the impugned order (Annexure-3) of the AA is sketchy, cryptic, result of non-application of mind and against the statutory provision of sub-rule (2) of Rule 25 of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules), has considerable force.

11. On the contrary, learned counsel has fairly acknowledged that the FIR (Annexure A-6 Colly.) is entirely different than that the FIR, on the basis of which the conduct of the applicant was Censured and matter needs to be clarified.

12. However, the contention of learned counsel for respondents, that since the punishment awarded by the DA was affirmed by the AA, so this Tribunal has limited jurisdiction to interfere in such departmental enquiry proceedings, is not tenable.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter, we are of the firm opinion that the instant OA deserves to be partly accepted, in the following manner.

14. As is evident from the record, that the applicant has preferred the statutory appeal dated 03.05.2011 (Annexure-5), but the same was rejected vide impugned order dated 01/04.10.2012 (Annexure-3) by the AA. The operative part of the order reads as under:-

“Following the appeal, I have heard the appellant in O.R. He has nothing new to add to what he has already submitted in writing. The scrutiny of file records indicates that Mobile CDR were not obtained in time though mobile number were available with the I.O. No attempts were made to obtain the details of relatives to locate the whereabouts of accused. Instead to get declared them P.O. proceedings were initiated in a convenient manner. This grossly reflects the working culture, attitude and supervision of the appellant in which complainant is trying his hard to trace the accused and giving information. This amply shows total incompetency and non supervision to the extent of dereliction of duty. I have also gone through the appeal preferred by the appellant and the other file records and found his contentions not convincing. Under these circumstances, I do not find any reason to interfere with the orders of the Disciplinary Authority. Hence, the appeal is rejected.”

15. Meaning thereby, although applicant has raised various important issues in his memorandum of appeal (Annexure-5), but the same were not considered & just ignored by the AA and the appeal of the applicant was not decided in terms of in terms of Rule 23 to 25 of the D.P. Rules.

16. According to sub-rule (2) of Rule 25, the AA is required to consider all the points raised in the grounds of appeal and then to pass a speaking/reasoned order, which is totally lacking in the present case. The AA has rejected the appeal of the applicant in a very causal manner. Hence the impugned order (Annexure-3) of the AA, is very brief, non-speaking and result of non-application of mind.

17. What cannot possibly be disputed here is that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

**“Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.**

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

18. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240** has in para 8 held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. **Unless reasons are disclosed, how can a person**

**know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation”.**

19. An identical question came to be decided by Hon’ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764*** which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that **“recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim.** If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just”. It was also held that “while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the



dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.***

20. Therefore, the impugned order of the Appellate Authority dated 01/04.10.2012 (Annexure-3) is arbitrary, illegal, non-speaking and against the statutory rules & principles of natural justice, which is not legally sustainable. Moreover, the genuineness and effect of FIR No.347 dated 13.07.2009 (Annexure A-6 Colly.), obtained by the applicant in the wake of application (Annexure-4 Colly.) under RTI Act, lodged by one Mukesh Kumar Khurana u/s 379 (not the FIR No.347/2009 u/s 420 IPC in question lodged by complainant Shri S.C. Goel) which goes to the root of the case, has also to be verified and considered by the AA in this regard.

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

22. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of subsequent hearing of the appeal, the instant OA is partly accepted. The impugned order dated 01/04.10.2012 (Annexure-3) passed by the Appellate Authority is set aside. The matter is

remitted back to the Appellate Authority to consider the genuineness and effect of the FIR dated 13.07.2009 (Annexure A-6 Colly.), all the issues raised by the applicant in his memorandum of appeal and then to decide the appeal afresh by passing a speaking & reasoned order and in accordance with law, within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention, if the applicant still remains aggrieved by the order passed by the Appellate Authority, he would be at liberty to challenge the same by filing independent OA, subject to all just exceptions and in accordance with law.

**(V.N. GAUR)**  
**MEMBER (A)**

**Rakesh**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**  
**22.08.2016**