

**Central Administrative Tribunal
Principal Bench**

OA No. 4196/2013

This the 17th day of May, 2016

***Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)***

Insp. Vijay Kumar,
(D-1040, PIS no.16950143)
S/o Sh. Satbir Singh,
R/o Flat no.4, J-192,
Arjung Nagar,
Safdarjung Enclave,
Delhi-110029.

Presently posted:-

Insp. Anti Terrorist Operation (ATO)
PS New Ashok Nagar,
Delhi.

- Applicant

(By Advocate: Mr. Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
New Delhi.
2. Commissioner of Police,
Police Head Quarters,
IP Estate, MSO Building,
New Delhi.
3. Joint Commissioner of Police,
Traffic, Delhi
Through Commissioner of Police,
Police Head Quarters,
IP Estate, MSO Building,
New Delhi.

- Respondents

(By Advocate: Ms. Sumedha Sharma)

ORDER (ORAL)

Hon'ble Mr. V.N.Gaur, Member (A)

In the present OA the applicant is challenging the Show Cause Notice, the order dated 12.10.2011 imposing on him the penalty of censure, and the order dated 18.06.2013 by which his appeal has been rejected. The allegation against the applicant was that he failed to take any action against the unauthorised buses that were found plying in the area under his jurisdiction by a surveillance team on 18.04.2011. During the relevant period, the applicant was posted as Traffic Inspector (TI) at Sarita Vihar Circle. The Show Cause Notice (SCN) given to the applicant and 16 others contained the following allegation:

“On 18.4.2011, a surveillance was carried out at Aali More regarding plying of four Interstate Buses No. DL-1PB-8259, PE 1017, RJ-32PA-0308) without permit and other documents from ISBT Kashmere Gate to Ballabhgarh, Faridabad, Haryana and found that at about 10:10 AM, a bus No.DL-1P-B8259 arrived at ISBT and started after picking passengers, at 11:00 AM, the same bus arrived near Aali More Traffic Signal and picked and dropped passengers. The same was stopped by the staff of PRG/Traffic and asked the driver to show the permit and other documents of the bus, but the driver failed to do so. After that the bus was prosecuted. At about 11:00 A.M., another bus No. RJ-02P-1017 had also started from ISBT after picking passengers, the same bus was stopped at Aali More by ACP-T/PRG and asked to show document and permit, but he failed to do so, then the same bus was also prosecuted. The following TIs and ZOs, under whose jurisdiction the un-authorised buses were found plying, failed to take any action against the vehicles.

| Sl.No. | Rank, Name & Belt No. | Posting Circle on 18.4.2011 | Present Place of Posting |
|--------|-----------------------------------|--------------------------------|-----------------------------|
| 1. | Inspr. Ravinder Kumar, No.D-1/103 | TI/DGC | TI/DGC |
| 2. | Inspr. Bir Singh, No. D/3173 | TI/TMC | TI/HKC |
| 3. | W/Inspr. Meera Sharma, No. D/411 | TI/LNC | TI/LNC |

| | | | |
|-----|---------------------------------|--------|--------|
| 4. | Inspr. Vijay Kumar, No. D/1040 | TI/SVC | TI/SVC |
| 5. | ASI R.B.Singh, No.5006/T | CLC | PTC |
| 6. | SI Harender Singh, No.2015/D | DGC | GNC |
| 7. | ASI Bijender Singh, No.2457/D | DGC | KKC |
| 8. | ASI Satya Parkash, No.2554/T | DGC | MTC |
| 9. | SI Anand Singh, No.3614/D | TMC | TMC |
| 10. | SI Dharmender Kumar, No.D/411 | LNC | LNC |
| 11. | SI Jai Pal Singh, No.1910/D | LNC | PBC |
| 12. | ASI Kunwar Pal Singh, No.2034/D | LNC | HKC |
| 13. | SI Ismail Khan, No.2514/T | LNC | NEP |
| 14. | SI Satish Chander, No.1704/D | SVC | SVC |
| 15. | SI Attar Singh, No.2316/D | SVC | SVC |
| 16. | ASI Dharam Singh, No.2078/D | SVC | SVC |
| 17. | ASI Gurtez Singh, No.2529/D | SVC | SMC |

The above act on the part of above police officers amounts to grave misconduct, negligence, carelessness and dereliction in the discharge of their official duties.”

2. The applicant replied to the SCN on 06.09.2011 stating that he had been very active in launching a special checking/drives of unauthorised operation of private chartered buses and as a result 214 challans were issued against the chartered buses in his circle during the period 04.02.2011 (date of his joining) upto 18.04.2011 (the date of incident). A few days prior to the date of incident he had one of the buses mentioned in the charge stopped and on non-production of the valid documents by the driver the bus was impounded. It was further submitted that the main work

of the Traffic Police is to ensure smooth flow of traffic to avoid the congestion for road users and to prosecute the visible violations for safety of road users. It was practically not possible for a TI to check the documents of each and every vehicle passing through the area. The disciplinary authority after considering the submissions of the applicant passed an order on 12.10.2011 confirming the penalty of censure on 13 officers including the applicant. The appeal of the applicant in which he more or less repeated the same arguments as in reply to the SCN, was dismissed by the appellate authority by order dated 18.06.2013.

3. Learned counsel for the applicant submitted that the disciplinary authority had issued the SCN and subsequent orders in a combined manner to 17 officers who were posted in different circles. Their roles and duties were also different but the respondents chose to deal all of them with a single order without specifying the precise lapse on the part to each one of them. The charge contained in the SCN dated 09.08.2011 qua the applicant is quite vague and it is not possible for the applicant to defend himself by giving specific reply. In his reply the applicant has given the data showing as to how he had been active in checking the vehicles by challaning a large number of them for violating the law. However it was practically not possible to check the papers of each and every vehicle as it would lead to serious traffic dislocation. The SCN did not pin point the act of the applicant

that could be treated as misconduct. It is an admitted fact that applicant was in-charge of that area but he has been penalised on the basis of a vague charge. This has caused a grave prejudice to the applicant as he was not able to defend himself properly and effectively. He cited judgment of Hon'ble Supreme Court in **Sher Bahadur vs. Union of India and others**, 2002 SCC (L&S) 1028 in support of his contention. Besides this ground the applicant had mentioned a number of other grounds in his reply to SCN as well as in the appeal filed later. The respondents did not consider those submissions while confirming the penalty of censure and rejecting his appeal. Learned counsel for the applicant also alleged discrimination against the mandate of Article 14 of the Constitution as 4 officers who were identically placed at Sl. No.1, 6, 7 & 8 in the SCN, were exonerated, while the applicant was penalised. It was further alleged that the same disciplinary authority in another similar case of surveillance and detection of plying of unauthorised vehicles issued SCN to 6 TIs on 15.07.2011 after considering their replies, though not agreeing with the explanation given by the TIs, let off those officers by giving a warning to be careful in future. In the case of the applicant no such consideration was shown.

4. Learned counsel for the respondents did not agree with the contention of the learned counsel for the applicant that the SCN was vague. According to her, respondents had given complete

and specific details of the buses that were on road without valid documents on a given date. According to her, there was no substance in the allegation that the charges were vague and therefore the judgment cited by the applicant would not be of any help to him. The applicant was given full opportunity to explain his conduct through SCN, hearing in Orderly Room and appeal. Thus, all the statutory and procedural requirements before the imposition of minor penalty of censure were scrupulously followed by the respondents. She also denied that there was any discrimination. The officers mentioned at Sl. No.1, 6, 7 & 8 in the SCN were exonerated after considering their explanation.

5. We have heard the learned counsels and perused the record placed before us. A surveillance team of Delhi Police (Traffic) had on 18.04.2011 found four inter-State buses plying without permit from ISBT Kashmere Gate to Ballabhgarh, Faridabad (Haryana) picking up passengers and dropping them at various points on the route. The disciplinary authority then issued a combined SCN to 17 officials of Delhi Police (Traffic) charging them with misconduct, negligence, carelessness and dereliction in discharge of official duties. These officials submitted their individual replies, however, the same was considered and again a combined order was passed on 12.10.2011 confirming the penalty of censure. While the replies submitted by officials at Sl. No.1, 6, 7 & 8 in the SCN were found to be satisfactory and were let off with a warning,

the rest of them without discussing the reply submitted by each one of them were imposed the penalty. Perusing the SCN and the order passed by the disciplinary authority, we are convinced that the charges levelled against the applicant are vague and did not specifically mention the lapse on the part of the applicant. We agree with the submission of the applicant that in the absence of such details he is not in a position to defend himself against the allegations. While the respondents do have authority and power to impose minor penalty without conducting a detailed departmental enquiry, in the interest of natural justice and fair play it is expected that the concerned official should be told in precise terms the lapse on his part and what was expected of him under the rules. It is obvious that at a particular moment like 11 a.m. when a bus was detected picking up passengers at ISBT all the 17 officials listed in the SCN could not have been guilty of the same charge as they were posted at different locations. The charge does not bring out the roles they were performing during that period and how their act of omission or commission was linked to the bus picking up passengers unauthorisedly. The same logic would apply to the violation of the conditions of permit by the buses at different times and places on that day as noticed by the surveillance team. In **Sher Bahadur** (supra) the Hon'ble Supreme Court observed as follows:

“7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh. R.A.Vashist, Ex. CVI/N.Rly., New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex.P-1.referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.”

6. In **OA No.1408/2008** this Tribunal in a similar situation allowed the OA with the following observation:

“8. But, however, we find as the matter presently stands, it is difficult to accept that any relevant details have been given to the applicant. Evidently it was not possible for him to make a defence and the contention that the charge was vague has to be accepted. In the aforesaid circumstances, we quash the impugned orders. Applicant will be considered as not subjected to any disability of the penalty that had been imposed on him. But however, we give liberty to the respondents to proceed against the applicant appropriately on the issues if they feel such follow up action is necessary in the interest of maintaining discipline. It should be ensured that the principles of natural justice as highlighted earlier in the judgment are duly followed. OA is allowed. Parties to bear their own costs.”

7. In the present case also, we are of the view that the SCN dated 09.08.2011 issued to 17 officers in one go, who were posted

at different places, should have pinpointed the individual lapses on the part of each one of them so as to enable them to submit their defence. In the absence of such specific details, the applicant has been deprived of his right to defence in the face of the vague allegations made in the SCN. In view of the above, we find the SCN dated 09.08.2011 as also the order confirming the penalty of censure dated 12.10.2011 and the order of the appellate authority dated 18.06.2013 not sustainable. Accordingly, these orders are quashed and set aside in respect of the applicant. The applicant will be entitled to all consequential benefits. It goes without saying that the respondents will have liberty to proceed against them, if so advised, by giving them a proper SCN in accordance with the rules and law. No costs.

(V.N. Gaur)
Member (A)

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