

**Central Administrative Tribunal
Principal Bench**

OA No.4225/2012

Order reserved on: 31.08.2016
Order pronounced on: 07.10.2016

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

Ved Singh Malik,
No. D-1/881 Security,
S/o Sh. Lal Singh
R/o Flat No.I,
Staff Quarter Shahdara,
Police Station, Delhi-110094.

- Applicant

(By Advocate: Mr. M.D. Jangra for Mr. M.K. Bhardwaj)

Versus

Govt. of NCT & ors. through

1. The Commissioner of Police,
Police HQ, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police (Security) (P.M.),
Vinay Marg,
Near Ashoka Hotel,
New Delhi-3.

- Respondents

(By Advocate: Mr. Vijay Pandita)

ORDER

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

The applicant has filed this OA praying for the following reliefs:

“(i) To quash and set aside the impugned order dated 16.03.2011 (A-1).

- (ii) To quash and set aside the appellate authority order dated 23.09.2011 (A-2)
- (iii) To quash and set aside the impugned order dated 08.04.2010 initiated disciplinary action against the applicant and allow the OA with exemplary costs.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

2. The respondents have initiated a joint departmental enquiry against the applicant and one Inspector Satya Dev Dahiya and Sub Inspector (SI) Lokender Singh vide order dated 08.04.2010.

3. Brief facts of the case are as follows:

"Case FIR No.161 dated 17.4.2008 u/s 365/376 IPC, PS Seelam Pur, Delhi was registered on the statement of Smt. Shamim w/o Late Imran r/o Salim Malik Ka Makan, near Bangali Peer, Kale Wali Gali, Giri Market, Dabur Colony, Loni, Ghaziabad, U.P. alleging that on 16.4.2008 at about 9 P.M. while the prosecutrix Shamim along with her sister-in-law (Nanad) Nafisa was standing on Road No.66, China Market Seelampur, Delhi, she was forcibly kidnapped by an acquaintance Arif in a Maruti car which was being driven by an unidentified person. Later she was raped by Arif in the moving car and thrown out in an unconscious condition at an isolated location in the area of PS Seema Puri, Delhi. When she regained consciousness, she found herself admitted in a hospital surrounded by some personnel who had rushed her to the hospital. Subsequently, the above case was registered and follow up action taken.

It was alleged against Insp. Satya Dev Dahiya, No.D-I/862, the then SHO/Seelampur (from 26.10.2006 to 27.06.2008), Insp. Ved Singh Malik, No.D-I/881 (the appellant/SHO/Seelampur) and SI Lokender Singh No.D/1146, (IO of the aforesaid case) that for a considerably long period, the arrest of the primary accused Arif was deliberately avoided without any plausible reason, even though allegations of sexual assault were duly authenticated by MLC report of prosecutrix. In between prosecutrix Shamim made several complaints of harassment, threatening etc. and requested for immediate arrest of Arif. During enquiries of such complaints specific directions were given by DCP/NE to expedite the investigation and affect the arrest of accused but the above delinquents made no sincere efforts to expedite the investigation and to apprehend the accused Arif. The considerable delay in arrest of Arif gave him

opportunities to seek remedies from the Court and as a result, he filed an anticipatory bail application which was dismissed on 23.10.2009 by ASJ/Karkardooma Courts. Arif again filed an anticipatory bail application No.2160/2009 in the Hon'ble High Court of Delhi in which the Hon'ble Court issued directions on 9.11.2009 to have a thorough probe into the conduct of the investigating agency i.e. against aforesaid delinquents. Accordingly, a vigilance enquiry was conducted by Joint C.P/Vigilance, in order to examine the aspect of authenticity of investigation carried out by the local police.

The vigilance enquiry revealed that the investigation carried out in the allegation of sexual assault perpetrated on Mrs. Shamim has not been handled properly. The enquiry has raised serious questions on the conduct of the investigation agency for their lackadaisical approach for not affecting the arrest of accused despite serious allegations by virtue of the flimsy plea of alibi taken by the accused, thereby missing the vital scientific evidence. Insp. Satya Dev Dahiya and Ved Singh Malik (the appellant) failed to supervise the investigation of such a heinous case and to affect the arrest of accused Arif. SI Lokender Singh remained the I.O. of the case for a considerable period and also failed to apprehend the accused Arif. He even recorded the statements of several witnesses u/s 161 Cr.P.C. in favour of Arif to prove his flimsy alibi.

It was also alleged against the aforesaid delinquents that prosecutrix Shamim visited PS Seelam Pur several times regarding progress of the case and arrest of Arif but in vain. Even prosecutrix during her one of the visits to PS Seelampur found Arif present in the police station and was assured that Arif will be arrested but he was let off without any solid reasons.

After the observation passed by the Hon'ble High Court of Delhi on 9.11.2009 for enquiry in the matter immediate arrest of Arif on 11.11.2009 also raised doubts on integrity of Insp. Ved Singh Malik (the appellant) and his connivance in not arresting the accused.”

4. The specific charge framed by the Enquiry Officer (EO) against the applicant read as under:

1. You, Insp. Ved Singh Malik No.D-I/881, after the registration of the case FIR No.161/08 u/s 365/376 IPC dated 17.04.08 P.S. Seelampur, Delhi for a considerably long time period, the arrest of the primary accused Arif was deliberately avoided without any plausible reason.
2. You, Insp. Ved Singh Malik No.D-I/881 did not arrest the primary accused Arif even though allegations of sexual assault were duly authenticated by the MLC report of prosecutrix Smt. Samim.

3. You, Insp. Ved Singh Malik No.D-I/881 did not bother to listen to the prosecutrix Smt. Samim even though she made several complaints of harassment, threatening etc. and requested for immediate arrest of accused Arif.
4. Due to your negligent attitude, the considerable delay in arrest of Arif gave him opportunities to seek remedies from the court and as a result, he filed the anticipatory bail application which was dismissed on 23.10.09 by ASJ/Karkardooma court.
5. Due to your negligent attitude, primary accused Arif again filed an anticipatory bail application No.2160/2009 in the Hon'ble High Court of Delhi in which the Hon'ble High Court had issued directions to have a thorough probe with the conduct of the investigating agency.
6. You Insp. Ved Singh Malik No. D-I/881, failed to supervise expeditiously the investigation of such a heinous case and effect the arrest of the primary accused Arif.
7. Prosecutrix Smt. Samim visited the P.S. Seelampur many times regarding progress of the case and arrest of primary accused Arif but in vain. Even prosecutrix during her one of the visits to P.S. Seelampur found the primary accused present in the police station and was assured that Arif will be arrested but he was let-off without any solid reasons.
8. After the observation passed by the Hon'ble High Court of Delhi on 9.11.09 for an enquiry into the matter, immediate arrest of accused Arif on 11.11.09 also raised doubts on your integrity and connivance in not arresting the accused Arif.

5. In his report, the EO concluded that the charge against the applicant was partly proved to the extent of lack of supervision. The charge against SI Lokender Singh stood proved while the charge against Inspector Satya Dev Dahiya could not be substantiated for lack of evidence. On 16.03.2011 the Disciplinary Authority (DA) after considering the report of the EO and the representation of the applicant imposed the punishment of censure on the applicant for not exercising proper supervision. The appeal

submitted by the applicant was rejected by the Appellate Authority (AA) vide order dated 23.09.2011. The applicant in the OA has challenged these orders mainly on the following grounds:

- (i) The applicant had joined as SHO after more than two months of the incident. The immediate responsibility of arresting the accused was on the EO and the SHO, who were Incharge at the time of filing of FIR dated 17.04.2008.
- (ii) This case was being monitored by ACP and DCP who were regularly briefed by the applicant and they were satisfied with the progress of the investigation. The DCP concerned had even filed an affidavit in Hon'ble Delhi High Court justifying the actions taken by the SHO. After the adverse comment by the Hon'ble Delhi High Court the respondents are trying to shift the blame on the applicant.
- (iii) All the articles of charges are interconnected and once the EO had not proved the articles no.3,4 & 5 he could not have concluded that articles 1,2 & 6 were proved against the applicant.
- (iv) It was the sincere effort and the pressure built by the applicant that the accused have to run to the Court of

Sessions Judge for anticipatory bail and later to the Hon'ble Delhi High Court.

- (v) Initially all the officers in the chain from EO to DCP viewed the complaint of the prosecutrix with suspicion and there was a clear cut oral order by the superior officers not to arrest the accused and the applicant could not have defied such directions of the superior officers.
- (vi) The EO had found the conduct of the applicant in consonance with the required parameters. The steps taken by the applicant by directing the EO to arrest the accused and several raids conducted for the arrest have been put on record by the EO. In such circumstances, the DA could not have held the applicant guilty of misconduct.
- (viii) Inspector Satyadev Dahiya, who was the SHO at the time of the FIR and remained there for next two months, was exonerated by the EO while the applicant was held guilty. This was in violation of Articles 14 & 16 of the Constitution of India. No action was taken against the ACP and DCP, who were also involved in the case all through.
- (ix) The DA and AA have not considered the submissions made by the applicant in his representation/appeal.

6. Learned counsel for the applicant submitted that it was Inspector Dahiya, who is actually responsible for not arresting the accused initially but the respondents have chosen to fix the entire responsibility on the applicant while letting the Inspector Dahiya go scot free. The applicant was SHO of that Police Station from 28.06.2008 to 11.09.2009. He made maximum efforts to get the accused arrested by conducting raids and it was because of his efforts that the accused had to approach the Courts of Session Judge for anticipatory bail. When the anticipatory bail was dismissed on 23.10.2009 accused filed another anticipatory bail application in the High Court of Delhi. As confirmed by the statement of DW-6 Inspector Jagdish Prasad, he took over as SHO on 20.10.2009. Therefore, it cannot be said that there was any laxity on the part of the applicant as the Supervisory Officer. The respondents are taking contradictory stand inasmuch as they have defended the action of the applicant in the affidavit filed before the departmental enquiry. The entire disciplinary action against the applicant is, therefore, illegal, arbitrary and unjustified. Further, there were contradictions in the complaint of the prosecutrix with regard to the sexual assault as a result there was the consensus to go slow and not arrest the accused. Referring to the statement of PW-7, who was employed as a medical record technicians of GTB Hospital, Delhi where the complainant was examined the learned counsel submit that there was no confirmation of sexual assault by

the Doctor who conducted the medical examination. There was also contradiction with regard to the timing at which the alleged kidnapping and sexual assault occurred. In the FIR, the time of the alleged incident was mentioned as 9 p.m. on 16.04.2008 while in the statement of prosecutrix the incident took place at 6 p.m. on 16.04.2008. Thus, there was no evidence that sexual assault took place on the prosecutrix on 16.04.2008 and in that background the applicant cannot be held guilty of not arresting the accused when there was no confirmation of the crime of the applicant. Learned counsel further submitted that the allegation against the applicant was vague, ambiguous and not specific as he did not spell out what steps were required to be taken up by the Supervisory Officer which were not taken. He relied on **State of Orissa vs. Binapani Dei**, AIR 1967 SC 1269, **Board of Trustees vs. Dilip Kumar**, AIR 1983 SC 109, **Dai-Ichi Karkaria Ltd. Vs. Union of India**, 2000 (4) SCC 57, **Consumers Action Group & Anr. Vs. State of Tamil Nadu & ors.**, 2000 (7) SCC 425, **Navaneaswara Reddy vs. Government of Andhra Pradesh & ors.**, AIR 1998 SC 939, **Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh**, 1991 (1) SCC 246, **State of Maharashtra & ors. Vs. Ku. Tanuja**, AIR 1999 SC 791 and **Rajat Baran Roy vs. State of West Bengal**, AIR 1999 SC 1661.

7. Learned counsel for the respondents, on the other hand, submitted that the applicant was SHO of the concerned Police Station for more than a year but he did not seriously pursue and

the accused person was not arrested. Being a special report case, it was expected from the SHO to supervise the inspection and get the accused arrested. The applicant cannot take shelter behind the argument that he had been continuously reporting his superior officer. It was his responsibility to have guided the EO and in the event EO was not acting on his advice to bring the matter to notice of his superior officer. The respondents had conducted a departmental enquiry. The Hon'ble High Court of Delhi while considering the anticipatory bail of the accused issued directions on 09.11.2009 to have a thorough probe into the conduct of the investigating agency. The respondents had conducted a vigilance enquiry by Joint Commissioner of Police, Vigilance which reveals that the allegation of sexual assault perpetrated on the prosecutrix had not been handled properly. The enquiry has raised serious questions on the conduct of the investigating agency for their lackadaisical approach for not affecting the arrest of accused despite serious allegations by virtue of the flimsy plea of alibi taken by the accused. After the observations made by the High Court on 09.11.2009 the accused in the case was arrested on 11.11.2009 which raised serious doubts on the integrity of the applicant. The allegations against the applicant have been enquired into following the due procedure and after giving opportunity for making the representation, the DA had passed the order imposing the penalty of censure through a speaking order. The appeal of the applicant

had also been considered by the AA through a reasoned and speaking order. Applicant has not made any allegation of denial of opportunity or violation of principles of natural justice in the conduct of the DA against the applicant. Therefore, no case has been made out for a judicial review. Learned counsel relied on **B.**

C. Chaturvedi vs. U.O.I., (1995) 6 SCC 749, **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A. Nagamalleshwara Rao**, AIR 1998 SC 111. The Tribunal at this stage also cannot re-appreciate the evidence which have been produced before the EO and a finding given by him. Learned counsel referred to **State of Tamil Nadu vs. S. Subramanyan**, 1996 (7) SCC 509, **State of Tamil Nadu vs. K.V. Perumal**, 1996 (5) SCC 474, **State Bank of India vs. S.K. Endow**, 1994 (2) SCC 537.

8. We have heard the learned counsel for the parties and perused the record. The main ground taken by the applicant is that he was not the SHO during the first two months after the registration of the case, and therefore, the then SHO and the EO were not responsible for arresting the accused. Besides that there was an understanding in the department that the complaint of the prosecutrix looked suspicious taking into account certain background information, and therefore, the accused need not be arrested immediately. Firstly, Inspector Dahiya has been exonerated in the enquiry while the applicant had been made scapegoat. It has also been

contended that the concerned DCP had filed an affidavit that the concerned DCP had filed an affidavit justifying the line of action of the applicant in the case but later have gone back on that statement by initiating disciplinary enquiry against the applicant.

9. The contentions of the applicant do not convince us at all because the evidence on record shows that the first SHO was there in that post only for about 2 months 10 days after the registration of the case. It has also been brought on record in the defence statement of Inspector Satya Dev Dahiya recorded in the report of the EO (page 66 of the OA) that ACP Seelampur and DCP/NE had directed to defer the arrest of the accused till the receipt of the FSL Report which was received on 28.10.2008. It was only after the receipt of FSL Report that senior officers directed the concerned EO to arrest the accused person. The statement of the applicant that there was oral direction by the senior officer not to arrest the accused person is true only to the extent that the arrest was to be executed only after the FSL Report. The applicant was SHO when the FSL Report was received and he continued to be there for another ten months thereafter. Applicant has not given any justification for deferring the arrest of the accused during this period. The DCP concerned did file an affidavit justifying the action taken by the department on the instant case, it is obvious from the observation of the Hon'ble High Court that the averments made in the affidavit was not accepted by the High Court. The superior

officers might have tried to defend the department in the matter but once the same has not been accepted by the High Court, the applicant cannot treat that affidavit as an estoppel for not initiating disciplinary proceeding against the concerned officers. The applicant had also argued that the fact of sexual assault on the prosecutrix was never confirmed in the MLC report given by the hospital, and therefore, there was no case for arresting the accused and hence no case for proceeding against the applicant. There cannot be a more coagulated argument than this. It has not been the argument of the applicant in any of his representations that there was no case at all against the accused in the criminal case. The FIR was registered against the accused under Section 365/376 IPC. Even if there was no confirmation of sexual assault there was a *prima facie* case of abduction which is a cognizable offence and the applicant's could not take a plea that there was no *prima facie* case for arresting the accused person. On the other hand, the applicant himself has been arguing that he could not proceed to arrest the accused because of the oral direction from the higher ups which does not show that he was convinced about the need for arrest of the accused person in the case. The assertion by the applicant that it was his reluctant pressure that forced the accused to approach the Court of ASJ for anticipatory bail is also not supported. The applicant was transferred out on 11.09.2009 while the anticipatory bail application was dismissed by the Court of ASJ

on 23.10.2009 and by the High Court on 09.11.2009. The accused was arrested immediately after the observations made by the High Court on 09.11.2009 which shows that had there been will on the part of the SHO and EO, the accused person could have been arrested much earlier.

10. We have considered the judgments cited by the applicant in the OA. Considering that the applicant has not established any case of denial of principles of natural justice or violation of the procedure in the departmental proceeding, the judgments of **Binapani Dei** (supra) and **Dilip Kumar** (supra) are not relevant in this case. Further, the DA and AA are detailed and speaking orders, and therefore, **Dai-Ichi Karkaria Ltd.** (supra) and **Consumers Action Group** (supra) and other judgments on the same point do not have any application in the present case.

11. From the evidence on record and the preceding discussion, it is observed that the delay in the arrest of the accused person was not simply a case of negligence or inefficiency. The fact that the accused was arrested within two days after the orders of the High Court, showed that had there been push by the SHO during his tenure more than a year after the FIR was lodged on 17.04.2008, the accused could have been arrested much earlier. Since there is a proven misconduct on the part of the applicant in the case of

J.Ahmed (supra) and **Inspector Prem Chand** (supra) are also of no relevance in this case.

12. As per the decision of the Hon'ble Supreme Court in **B.C. Chaturvedi** (supra) it is also a settled law that the Court may not interfere with the punishment awarded by the DA once the same has been done after following the due process of law. This limitation imposed on the jurisdiction of the Tribunal in the matter of disciplinary proceedings is common with the judgment of Hon'ble Supreme Court in **Union of India vs. Parma Nand**, AIR 1989 SC 1185 and that the Court cannot re-appreciate the evidence and come to its own conclusion in the case of **S. Subramanian** (supra).

13. Considering the entire conspectus of the case and taking into account fact of law, we do not find any merit in the OA and the same is dismissed.

(V.N. Gaur)
Member (A)

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

'sd'

October 07, 2016