

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.557/2012
With
O.A. No.558/2012

Order reserved on 12th September 2018

Order pronounced on 5th October 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S. N. Terdal, Member (J)

O.A. No.557/2012

Virender Singh
Head Constable
Sh. Ilam Singh
r/o H.No.E-2
Gali No.10
Ambedakar Vihar
Joharipur Extn.
Delhi – 110 094

O.A. No.558/2012

Satbir Singh
s/o Sh. Inder Raj Singh
r/o F-2/644, Sunder Nagar
Nand Nagari
Delhi – 110 093

..Applicants

(Mr. Ajesh Luthra, Advocate)

Versus

1. The Commissioner of Police
New Delhi
MSO Building
Police Headquarter, ITO, New Delhi
2. The Joint Commissioner of Police
New Delhi Range, Delhi
MSO Building, Police Headquarters
ITO, New Delhi
3. The Deputy Commissioner of Police
North East District, Delhi
DCP Office, Silampur, Delhi

4. The Enquiry Officer
Sh. Dharam Veer Joshi
ACP/Shahdara, Delhi

..Respondents

(Mrs. Harvinder Oberoi, Advocate)

O R D E R

Mr. K.N. Shrivastava:

Since common issues of facts and laws are involved, with the consent of the parties, it was decided to dispose of these two O.As. by this common order.

2. The factual matrix of these cases, as noticed from the records, is as under:-

3. At the relevant point of time, SI Satbir Singh (applicant in O.A. No.558/2012) and HC Virender Singh (applicant in O.A. No.557/2012) were posted at P.O. Cell/ North-East District, Delhi. A complaint was received from one Mr. Anil Jain s/o Shripal Jain, r/o 6/12, Vishwas Nagar, Shahdara, alleging that on 12.06.2010, he had informed SI Satvir Singh (applicant in O.A. No.558/2012) over his mobile phone regarding the presence of a proclaimed offender (PO), Amit Bhatia s/o Mr. Ashok Bhatia, declared by the court of ACMM, at his residence at Vishwas Nagar. SI Satvir Singh accompanied with HC Virender Singh (applicant in O.A. No.557/2012) and one Constable Rana reached the place at 10.30 hours. At his instance, the said PO was apprehended by the aforesaid police officials and together with the complainant, Anil Jain, the PO was brought to Shahdara PS. It is alleged that the police officials pressurized the complainant to compromise the matter with the PO, Amit Bhatia, but he

refused for any settlement. It is alleged that the complainant was asked to leave the PS, and on the next date when he enquired about the arrest of the PO, Amit Bhatia from SI Satbir Singh (applicant in O.A. No.558/2012), he failed to give any satisfactory reply. It is further alleged that these applicants (SI Satbir Singh and HC Virender Singh) released the PO, Amit Bhatia without making any DD entry under Section 65 of Delhi Police Act, 1978. The complainant had also produced a photocopy of the order of the court of ACMM whereby Amit Bhatia was declared as a PO, at the time when the said PO was brought to the PS with the complainant.

4. Mr. Anil Jain, complainant, formally lodged a complaint with the Deputy Commissioner of Police, North-East District, Delhi in regard to the misconduct of these applicants vide his letter (p.31) and requested for conducting enquiry in the matter. The said reads as under:-

“It is humbly requested that the applicant’s brother Rajeev Jain has filed a case against Amit Bhatia s/o Ashok Bhatia, Sahibabad in the court of ACMM. Wherein Amit Bhatia has been declared as PO in the above said case.

On 12.06.2010 at around 10.30 am, applicant through Satbir Singh, Incharge PO Cell, HC Virender Singh and another Constable named Rana got arrested Amit Bhatia from Vishwas Nagar. After that, they brought Amit Bhatia to Shahdara Police Station and put pressure on me for mutual settlement. On my refusal they asked me to leave the police station and discharged Amit Bhatia. Again on next date when I enquire about Amit Bhatia then he did not give me satisfactory reply.

Therefore, it is requested that the above said matter be enquired.”

5. For this act of the applicants, they were subjected to disciplinary enquiry (DE) proceedings. The summary of allegations issued to these applicants would read as under:-

“It is alleged against SI Satbir No.D-2067 and HC Virender Singh No.1822/NE that while posted at P.O. Cell North East Distt., Delhi they did not make arrest of one PO namely Amit Bhatia s/o Ashok Bhatia r/o G-3/139, Radhey Shaym park, Rajender Nagar Shaibabad UP. The complainant Sh. Anil Jain s/o Shripal Jain r/o 6/12 Vishwas Nagar, Shahdara leveled allegations against SI Satbir (P.O. cell/NE), HC Virender Singh and Const. Rana that on 12.6.10 at about 10.30 he informed SI, HC and Const. regarding presence of PO Amit Bhatia at his residence at Vishwas Nagar. At the instance of complainant Amit Bhatia was apprehended from his residence at about 12.00 or 13.00 hrs. Sh. Anil Jain also produced at photocopy of PO order wherein Amit Bhatia was declared PO by the Court of ACMM. SI Satbir, IC Virender and const. Rana with complainant brought the PO to the police station Shahdara where SI Satbir D-2067 and HC Virender Singh No.1822/NE pressurized the complainant to compromise the matter with PO, Amit Bhatia but complainant denied for any settlement. Later on, complainant was asked to leave the police station. It is further alleged that on next date when complainant enquired about the arrest of PO Amit Bhatia but SI Satbir did not give satisfactory reply and released the PO. During preliminary enquiry conducted by PG/Cell/NE on the complaint of Sh. Anil Jain, it is revealed that HC Virender Singh released PO Amit Bhatia without making any DD entry.

The above act on the part of you, SI Satbir Singh No. D-2067 and HC Virender Singh No.1822/NE amounts to gross misconduct, negligence and malafide intention in the discharge of their official duties, which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment and Appeal Rules) 1980.”

6. The disciplinary authority (DA), namely, Deputy Commissioner of Police, North-East, District appointed ACP Dharam Vir Joshi as enquiry officer (EO) to enquire the matter. The applicants participated in the enquiry. 4 prosecution witnesses (PWs) and 2 defence witnesses (DWs) were examined. The EO submitted his report on 05.03.2011 (pp. 48 – 52) to the DA and concluded therein that on the basis of material evidence on record and facts of the case, the charge against the delinquents (applicants) stood proved. The relevant part of the EO's report is extracted below:-

DISCUSSION:

I have carefully gone through the depositions of PWs examined during the course of DE proceeding, documents on record and version of defence witnesses, as well as defence statements submitted by both delinquents. On 12.6.10 complainant Sh. Anil Jain s/o Shri Pal Jain r/o 6/12 Vishwa Nagar Shahdara Delhi informed to SI Satbir Singh I/C PO Cell/NE Delhi that PO Amit Bhatia was apprehended at his residence at Vishwas Nagar. On this information SI Satbir Singh alongwith HC Virender Singh reached at the given address where complainant Sh. Anil Jain and his brother Rajiv Jain handed over Amit Bhatia to them and also produced a photo copy vide which Amit Bhatia was declared P.O. by the Court of AC MM, Shahdara. SI Satbir Singh and HC Virender Singh had taken Amit Bhatia, the PO to PS Shahdara where the complainant was pressurized to compromise the matter with PO Amit Bhatia but the complainant refused for any settlement. Later on the complainant was asked to leave the P.S. On the next day when complainant inquired about the arrest of Amit Bhatia from SI Satbir Singh who did not give him satisfactory reply. Than complainant Anil Jain filed a complaint to DCP/NE on 17.6.10 in this regard. An enquiry was conducted by Inspr. PG/Cell NE on this complainant in which it was revealed that HC Virender Singh released to PO Amit Bhatia without taking any legal action and without making any DD entry in this regard.

During the course of DE preceding PW-2 in his statement Anil Jain corroborated the allegation leveled in the complaint filed him to DCP/NE on 17.6.10. PW-4, Inspr. Ved Singh Dhankar, Inspr. PG/Cell also deposed that he made an enquiry into the complaint of Sh. Anil Jain and submitted his enquiry report to the senior officer after recording the statements of SI Satbir Singh and HC Virender Singh.

PW-1 HC Vikash No. 26/NE (Min) & PW-3, Const. Vijay 1674/NE are formal witnesses and they proved only posting of SI Satbir Singh and HC Virender Singh. Both the delinquent taken plea that they were not aware whether Amit Bhatia s/o Ashok Bhatia r/o G-3/139, Radhey Shyam, Rajender Nagar, Shahibabad UP was declared P.O. in any case. His name was not mentioned in PS record. SI Satbir Singh stated that he was on leave on 12.6.10 and in order for doing good work by arresting the PO he called HC Virender Singh and they had taken Amit Bhatia and complainant Anil Jain to PS Shahdara but the complainant did not produce any original order vide which Amit Bhatia was declared PO and shown a photo copy only which was not attested and was issued before one and half month. He further stated that during enquiry from Amit Bhatia it has been revealed that he had neither received any notice/summon/warrant from any court nor has due of amount was pending with him, in presence of complainant Sh. Anil Jain. On this ground unless the proper verification of the order of declaring PO from the court they did not arrest to Amit Bhatia in good faith and no moral turpitude of the applicants. They further taken plea that PW4, Inspr. Ved Singh

Dhankar Inspr, PG/Cell/NED, had not recorded the statement of complainant Sh. Anil Jain during his enquiry and also not verify the PS record whether Amit Bhatia is PO or other wise. His enquiry report is contrary. On this technical grounds both the applicants are deserving for exoneration.

Both the delinquents SI Satbir Singh and HC Virender Singh are silent about the reason of not making DD entry to release of Amit Bhatia. They should have lodged a detailed report for the grounds of releasing to Amit Bhatia in daily diary but they failed to do so.

During enquiry it is established that Amit Bhatia, who was allegedly a PO, was brought to the Police station. A photocopy of the order of the court was shown to the police official. SI Satbir Singh (though on leave) and HC Virender were present at Police Station and were acting on the information given by Mr. Anil Jain. None of the police official has recorded the reasons (as plea taken by them in their defence statement) in the Daily Diary of police station. The technical defence can not absolve from the responsibility of recording the reason for their conduct as police officer.

Conclusion:-

In view of the above discussion, deposition of PWs, material evidence on record and facts of the case, the charge stands proved against both the delinquents SI Satbir Singh No.D-2067 and HC Virender Singh No 1822/NE.”

7. Acting on the EO's report, the DA, vide his order dated 31.03.2011, imposed the penalty of 'forfeiture of three years annual increments with cumulative effect' on these applicants. They preferred their statutory appeal before the appellate authority, namely, the Joint Commissioner of Police, New Delhi Range, Delhi, which was dismissed by AA, vide its order dated 22.12.2011.

Aggrieved by the orders of DA and AA, the applicants have approached this Tribunal in the instant O.As. praying for the following main relief (O.A. No.557/2012):

“(a) Set aside the impugned order No.4302-07/SO/NDR dated 26.12.2011 passed by the Respondent No.2 affirming the order

No.4661-80/HAP/NE(P-II) dated 31.03.2011 of the Respondent No.3 wherein the Applicant has been awarded punishment of forfeiture of three years annual increments with cumulative effect.”

8. In support of the reliefs claimed, the applicants have broadly pleaded the following important grounds:

8.1 The orders passed by DA and AA are non-speaking, arbitrary and defective.

8.2 The contentions raised by the applicants in their joint defence statement dated 31.03.2011 have not been considered and they have been unfairly inflicted with severe punishment of forfeiture of three annual increments.

8.4 The EO's report is based on presumptions and suspicion and not borne out of facts.

8.5 The applicants were not aware whether Amit Bhatia was a declared PO, as his name does not figure in the PO register of police.

8.6 The applicants had gone to the residence of the complainant, Anil Jain on receiving information and with good intention apprehended Amit Bhatia thinking that he is indeed a PO.

8.7 The complainant did not produce any original document to prove that Amit Bhatia was a declared PO. He had only produced a photocopy of the court order.

8.8 The EO has failed to appreciate the evidence adduced before him by the applicants and has jumped to a conclusion without appraising the evidence.

8.9 The applicants have clean service records and had arrested more than 100 POs in the past in various cases. Hence, their *bona fides* cannot be doubted. The punishment given to them is very harsh and is based on perfunctory findings of the EO.

9. Pursuant to the notices issued, the respondents have entered appearance and filed their replies in both the O.As., in which they have broadly stated as under:-

9.1 The applicants had apprehended PO, Amit Bhatia after receiving information from the complainant, Anil Jain, but failed to formally arrest the PO, despite Mr. Anil Jain producing the photocopy of the order of the Court declaring Amit Bhatia as PO.

9.2 It is not correct to say that the EO did not conduct the enquiry properly. As a matter of fact, 4 PWs and 2 DWs have been examined by the EO before arriving at his findings.

9.3 The plea of the applicants that they had to release Amit Bhatia, as there was no certified copy of the court order declaring him as PO was made available by Anil Jain, the complainant, then the counter question would be that if that was the case, why PO, Amit Bhatia was taken to the PS and for this reason, the applicants ought not have apprehended him and could have released him at the residence of Anil Jain.

9.4 It is proved in the enquiry that the applicants had attempted to pressurize the star witness, Anil Jain for reaching a compromise with the PO, Amit Bhatia and they failed to arrest him for the reasons best known to

them and released him even without making any DD entry, as required under Section 65 of Delhi Police Act, 1978.

10. The applicants have filed rejoinders to the replies filed on behalf of the respondents, in which, more or less, they have reiterated their plea in the O.As.

11. On completion of pleadings, these matters were taken up for hearing the arguments of the parties on 12.09.2018. Arguments of Mr. Ajesh Luthra, learned counsel for applicants and Mrs. Harvinder Oberoi, learned counsel respondents heard.

12. Mr. Ajesh Luthra, learned counsel for applicants stated that the complainant, Anil Jain had only produced a photocopy of the court order declaring Amit Bhatia as PO and on the basis of the photocopy of the order, the applicants could not have arrested Amit Bhatia. The complainant, Anil Jain ought to have produced a certified copy of the court order. He strenuously argued that Amit Bhatia is not a declared PO as per the police records, as is evident from the deposition of DW-2, Constable Prem Kumar, who was Assistant Record Moharrar of Shahdara, PS. The learned counsel further submitted that since Amit Bhatia, PO was never arrested, and hence, there was no question of making any DD entry for his release.

13. *Per contra*, Mrs. Harvinder Oberoi, learned counsel for respondents submitted that the star PW, Anil Jain (PW-2), who was the complainant, in his deposition before the EO, had corroborated his complaint and there is no contradiction between his deposition and the complaint that he had lodged. The applicants have miserably failed in the discharge of their duties

in allowing the PO to escape despite apprehending him on the information of the complainant, as also in pressurizing the complainant to compromise with Amit Bhatia, PO. The EO's findings clearly establish the misconduct and dereliction of duty on the part of the applicants.

14. We have considered the arguments of the parties and perused the pleadings.

15. It is not in dispute that the PO, Amit Bhatia was apprehended at the residence of the complainant, Anil Jain on receiving an information from Anil Jain by the applicants. After perusing the photocopy of the court order that Amit Bhatia is indeed a declared PO, they brought him and the complainant to the PS.

16. The contention of the applicants that only a photocopy of the court order was produced by the complainant, Anil Jain in regard to Amit Bhatia having been declared as PO and that he should have produced a certified copy, is indeed bizarre, to say the least. Nothing prevented the applicants to ascertain the authenticity of the court's order. The EO's report has also established the malfeasance of the applicants.

17. It is trite law that the scope of judicial review in DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

- (a) Principles of natural justice have not been followed in the conduct of DE proceedings,

- (b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,
- (c) The penalty orders have been passed in violation of relevant laws/rules; and
- (d) The punishment inflicted is disproportionate to the offence committed.

18. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

- (i) **Union of India v. P. Gunasekaran**, (2015) 2 SCC 610
- (ii) **Ranjit Thakur v. Union of India & others**, (1987) 4 SCC 611; and
- (iii) **Kuldeep Singh v. Commissioner of Police & others**, JT 1998 (8) SC 603.

19. In the present case, we find that the enquiry was conducted in the prescribed manner. The principles of natural justice have been observed at every stage of enquiry. The applicants participated in the enquiry and they were given ample opportunity to clear them off the charge. The EO has given a clear finding that the charge against the applicants stood proved. The punishment of 'forfeiture of three years annual increments with cumulative effect' imposed on the applicants by the DA also does not appear to be disproportionate to the misconduct committed by them.

20. In view of the above, we do not find any merit in these O.As. Accordingly, they are dismissed without any order as to costs.

(S N Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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