

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2689/2016
MA-2408/2016

Reserved on : 07.08.2018.

Pronounced on : 11.09.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Surender Rana (Inspector)
No.D-1/742 (PIS No. 16940052)
Age: 47 years
Designation: Inspector (Group-B)
Presently posting at: West Zone
Special Branch, Delhi Police
Tilak Nagar, New Delhi
S/o Late Sh. Rishal Singh,
R/o 6223, Pocket C-6,
Vasant Kunj, New Delhi.

.... Applicant

(through Sh. S.C. Sagar, Advocate)

Versus

1. Commissioner of Police
Through Jt. Commissioner of Police
(Special Branch),
Police Headquarter,
I.P. Estate, New Delhi.
2. Dy. Commissioner of Police,
Delhi Police,
Special Branch,
New Delhi.
3. Govt. of NCT of Delhi through
Chief Secretary,
Players Building,
I.P.Estate, New Delhi. Respondents

(through Ms. Harvinder Oberoi, Advocate)

ORDER

The current O.A. has been filed seeking the following reliefs:-

- “(i) set aside the impugned order dated 20.8.2014 (Annexure P-1) passed by Disciplinary Authority/Dy. Commissioner of Police (Special Branch), New Delhi.
- (ii) set aside the impugned order dated 28.4.2015 (Annexure P-2) passed by Appellate Authority/Jt. Commissioner of Police, (Special Branch), New Delhi.
- (iii) set aside the impugned Explanation dated 23.7.2013 (Annexure P-3) issued by Disciplinary Authority/Dy. Commissioner of Police (Special Branch), New Delhi.
- (iv) set aside the impugned Show Cause Notice dated 6.5.2014 (Annexure P-4) issued by Disciplinary Authority/Dy. Commissioner of Police (Special Branch), New Delhi.
- (v) Call the official record of the departmental enquiry and as well the criminal record of case FIR No. 407/2004 U/s 489C IPC, PS New Friends Colony, Delhi case titled “State vs. Mohd. Farooq & Ors.”

2. The applicant in OA is working with Delhi Police since 02.10.1994. In a judgment dated 11.05.2012 in the case of **State Vs. Mohd. Farooq** (Session Case No. 53/2011) the Trial Court acquitted the accused, giving them benefit of doubt. The respondents alleged that the judgment passed in the said case was on account of certain lapses in the investigation led by the applicant and imposed upon him a penalty of ‘censure’, which has been challenged in the O.A.

3. The details of the incident, which led to passing of the order (resulting in acquittal of the accused), in brief are that a raid was conducted by SI Balbir Singh at New Friends Colony on 27.08.2004,

wherein two accused were apprehended along with counterfeit currency. A case vide FIR No. 407/04 u/s 489 IPC was registered. The investigation was then handed over to the applicant (Surender Rana). As per the statement of the arrested accused the team comprising of the applicant in the OA (PW 7) along with Constable Govind Bisht (PW 4) apprehended and arrested the third accused Abul Kalan Azad. A disclosure statement of Abul Kalam Azad was recorded, who led the raiding party to Okhla where he resided in the house of his cousin. From an iron almirah kept in a room of the said house, some more counterfeit currency was recovered and seized. The accused persons pleaded not guilty and claimed trial. During the trial, certain lapses in the investigation were noticed, which have been mentioned in the aforementioned judgment dated 11.05.2012, leading to acquittal of the accused.

4. The applicant avers that out of the (six) alleged lapses in investigation mentioned in the show cause notice, only three pertain to him. His reply on the same was submitted but not properly considered by the respondents. Thus, the penalty of censure imposed on him is unwarranted. He not only conducted the investigation diligently, but also followed the guidelines on search & seizure and recovery of Fake Indian Currency (FICN), scrupulously. The applicant submits that he should not have been penalized

merely on the observations of the Ld. Trial Court in the judgment, against which the respondents have not filed an appeal.

5. The applicant has relied upon various judgments to counter the allegation of lapses in investigation led by him, namely, the decisions of Hon'ble Supreme Court in the case of **Govindraju @ Govinda Vs. State**, 2012 (4) SCC 722, **Pramod Kumar Vs. State**, AIR 2013 SC 3444 and **State Vs. Sunil**, 2001(1) SCC 652. He has also placed reliance on judgments of Hon'ble High Court of Delhi in the case of **Commissioner of Police Delhi Vs. HC Laxmi Chand**, [WP(C)-22584/2005] decided on 09.09.2011 and on the decision of Hon'ble Supreme Court in the case of **Rajendra Yadav Vs. State of M.P.**, Civil Appeal No. 1334/13 dated 13.02.213 and **Director General of Police & Ors. Vs. G. Dasayan**, 1998 (2) SCC 407.

6. In their counter, the respondents contend that after carefully going through the judgment passed by ASJ in case FIR No. 407/2004 u/s 489C IPC, it was noticed that applicant, while posted as SHO, M.S. Park committed certain lapses on account of which the prosecution lost its case. The applicant was issued an explanation letter dated 23.07.2013 mentioning that:-

"On perusal of judgment passed by Sh. Gurvinder Pal Singh, ASJ (FTC), Saket Courts in case FIR No. 407/2004/U/s 489C IPC, PS New Friends Colony it has come into notice that you, IO/SI (now Insp. Surender Rana No. D-3307 (PIS No. 16940052) presently posted as SHO/Man Sarovar Park committed following lapses which lead the case to acquittal:-

"1. No D.D entry regarding either to departure to the place of recovery of neither there from was placed on the record.

2. No public witnesses was associated at any stage of proceedings more particularly at the time of recovery.

3. SI Balbir Singh could not identify accused Abdul Kalam Azad during his examination on the first day but later identified him which created doubt in the story of the prosecution.

4. Certain other discrepancies regarding recovery and packing of recovered notes came during examination.

5. No evidence was collected to link the accused Abdul Kalam Azad with the premises from where the currency notes were recovered.

6. Seal after use was not handed over to any independent person."

This was followed by a show cause notice on 06.05.2014/09.05.2014.,

7. To the six lapses in investigation pointed out by the respondents emerging from the judgment of the trial Court, the applicant responded by stating that his role was confined only to three of the six lapses pointed out. Since the written reply of the applicant was not found convincing so he was given an opportunity to appear in O.R. The applicant being on medical rest since 30.06.2014, the Disciplinary Authority decided the show cause notice on 20.08.2014, censuring his conduct. The respondents contend that it is clear from the judgment of the Addl. Sessions Judge in Trial Court that the lapses during investigation led by the applicant, led to acquittal of the accused.

8. During the course of hearing, the learned counsel for the applicant Sh. S.C. Sagar forcefully argued that penalty of censure

has been wrongly imposed on the applicant on account of alleged shoddy investigation. He painstakingly took the Bench through the facts of the case and argued that the applicant was the second Inquiry Officer in the case, and half of the alleged lapses (three out of six) in the investigation do not pertain to him. He stated that out of the six lapses pointed out by the respondents, the applicant is not concerned with lapses mentioned at S.Nos. 1, 3 & 6 of the show cause notice. The discrepancies pointed out at S. Nos. 2, 4 & 5 have been convincingly rebutted by the applicant in his reply dated 03.06.2014.

8.1 Regarding the lapse (at Serial No. 2) of "non-association of public witnesses at any stage of the proceedings", Sh. Sagar submitted that the applicant made concerted efforts to ask the public persons to join in the investigation, but nobody came forward for which, he cannot be responsible. He cited various judicial pronouncements wherein it has been held that official witnesses are as good as public witnesses and their non-joinder cannot be termed as defective investigation. With regard to lapse (at Serial No.4) of "recovery and packing of recovered notes during examination", he emphasized that there were no discrepancies in recovery and packing of counterfeit currency and the recovered notes were sent to (Forensic Science Lab as per the laid down procedure. Countering the lapse (at S.No.5) regarding "No evidence was

collected to link the accused Abdul Kalam Azad with premises from where the notes were recovered", the counsel stated that the premises belonged to a relative of the accused, but in the absence of the original documents this could not be proved. He tried to hammer home the point that the applicant has been wrongly punished for the alleged lapses by being singled out arbitrarily whilst the other colleagues of the applicant have been let off without any show cause notice or censure. He claimed that the applicant scrupulously followed the guidelines on investigation of fake Indian currency as given in Standing Order No. 417/2013 (Annexure P-9) and was diligent in carrying out his duties as mandated under law. Relying on the case of **Gian Chand Vs. State of Haryana**, 2013(9) Scale 554, Sh. Sagar submitted that Hon'ble Supreme Court has held that if the public witnesses do not come forward to depose or join the investigation, it will not have any adverse effect on the investigation. Similarly, in the case of **State of Maharashtra Vs. Ramlal Devappa Rathod**, 2016(1)SCC 294 SC, Hon'ble Apex Court has held that recovery of crime articles are not necessary to be made in the presence of Panch/Independent witness and that if these are made before the Inquiry Officer, the same cannot be doubted.

9. Per contra, rebutting these arguments forcefully, the learned counsel for the respondents Ms. Harvinder Oberoi took the Bench through the observations of ASJ in judgment dated 11.05.2012,

wherein the lapses in investigation on part of the applicant are clearly brought. She made a specific mention of paras-14, 17, 18, 19, 20, 21 and 23 of the judgment, which deal with the loopholes, which led to the acquittal. Ms. Oberoi stated that these paras specifically deal with contradictory stand taken by SI Surender Rana (PW-7) and Constable Govind Bisht (PW-4). She emphasized that in paras 20 and 21, material contradictions exist between versions of the applicant SI Surender Rana and the Constable Govind Bisht. The Ld. ASJ expressed his extreme dissatisfaction in the manner in which the investigation was conducted and how no efforts were made by the applicant to procure/associate independent witnesses to lend credence to the proceedings. The case of the prosecution was diluted on account of wavering and contradictory statements given by the applicant resulting in acquittal of the accused persons by getting benefit of doubt. The Ld. Counsel forcibly argued that the applicant has been rightly censured for his lack of diligence and negligent investigation.

10. I have gone through the facts of the case, considered the rival submissions, and carefully perused the judgment dated 11.05.2012 in the case of **State Vs. Mohd. Farooq etc.** (supra) delivered by the Learned ASJ.

11. The applicant, in the OA and the learned counsel for the applicant have sought to justify and explain the lapses pointed out

at S.Nos. 2, 4 & 6 in the show cause notice but their defense is on an extremely weak footing.

12. Almost the entire judgment centers around the infirmities in investigation and lack of consistency of statements of PW-7 (applicant) and PW-4 (Constable Govind Bisht), who dealt with major part of the investigation. How these lapses impacted the trial is brought out in the following observations:-

“14. Ld. Counsel for accused argued that the cited and examined officials/police witnesses of the alleged recovery in their testimonies narrated of contradictory and inconsistent version; even PW1 wrongly identified accused Abul Kalam Azad to be the accused Mohd Farooq; also SI Balbir Singh (PW1) testified of different numbers of the currency notes alleged to be recovered from the possession of the accused and what were produced in evidence; despite the fact that accused persons were stated to be arrested at a busy market place, no efforts had been made to join any independent witness, shopkeeper and customers available there in apprehension/arrest of the accused and alleged recovery from the accused Mohd Farooq and Mohd Faiyaz. Even no neighbors were joined in the search of the alleged house of the accused Abul Kalam and also qua alleged recovery of 12 counterfeit currency notes there from at the instance of accused Abul Kalam. The material witnesses SI Surender Rana (PW7) and Ct Govind Bisht (PW4) testified different versions in respect of the room where the almirah was kept where from counterfeit currency notes were so recovered. It has also been argued that the police witnesses in the absence of corroboration from independent version by virtue of their inter se contradictory testimonies are lacking credence, no trustworthy, cannot be believed upon to rest conviction of any or all accused. Ld. Counsel for accused persons prayed for acquittal of the accused persons.”

Further, para-20 of the said judgment reads as under:-

“20. Also is the case of prosecution that it was accused Abdul Kalam Azad @ Guddu who led to house no.F33, Abul Fazal Enclave, Shahin Bagh, Okhla, New Delhi where from he had got recovered from an almirah in a room, 12 counterfeit currency notes of denomination of 100 each, Ex. P2/1 to 12 which were seized vide memo Ex PW4/D. Ct Govind Bisht (PW4) says that they had gone only in one room at ground floor at said premises where the recovery was so effected. SI Surender Rana (PW7) in material

contradiction to the version of Ct Govind Bisht (PW4) narrated that in all there were two rooms in the said premises and after crossing the first room from there and going into the second room the recovery was effected from the almirah from top shelf from where said counterfeit currency notes were taken out and handed by accused Abul Kalam. Ct Govind Bisht (PW4) even could not elicit as to whether the house of accused Guddu was a single storeyed house, double storeyed or three storeyed or more, despite the fact that he (PW4) claims to have gone there and witnessed the alleged recovery. Site plan Ex PW7/B prepared by SI Surender Rana (PW7) depicts existence of only one room in the stated premises F33, Abul Fazal Enclave, it does not depict the existence of the two rooms as what is deposed by PW7. Version of SI Surender Rana (PW7) stands falsified on the face of record. Here also no efforts, what to say of any sincere efforts, were made to join any two neighbors in the search of the premises to show the act of fairness on the part of officers of investigating agency and to comply with the mandate laid in Section 100(4) of the Code of Criminal Procedure. No two respectable inhabitants of the locality were asked to join investigation for search of the premises and recovery there from. Investigation on the face of record does not depict any efforts made by officers of investigating agency to bring on record as to in what manner accused Abul Kalam Azad @ Guddu was in exclusive possession or even possession of said premises at F-33 Abul Fazal Enclave. It is own case of the prosecution that the said premises from where the alleged recovery of currency notes Ex P2/1 to 12 were effected belonged to the cousin brother of accused Abul Kalam Azad @ Guddu has not been cited or examined as prosecution witness. In what status or capacity the said cousin of accused Abul Kalam Azad @ Guddu was enjoying the possession of the said premises, has not been unearthed in the course of investigation nor proved on record, as to whether he was a licensee, lessee or an owner thereof.

21. I will not hesitate to invoke Section 73 of the Evidence Act in the facts of the case. SI Surender Rana (PW7) claimed that he prepared the site plan Exts PW7/A and PW7/B but their bare perusal makes it is visible and clear that the writing of site plan Exts PW7/A and PW7/B are entirely different. It brings on record the fact that the maker of these two documents i.e. Exts PW7/A and PW7/B is not the one and same person. It also adds dimension to the shadow of doubt casted over the presented case of prosecution."

After recording these discrepancies, the Learned ASJ has held that:-

"23. Aforesaid discussion has made me reach to the conclusion that the testimonies of the material witnesses are suffering from material contradictions, severe infirmities and inherent improbabilities, which in the absence of corroboration from testimony of any independent witness/shopkeeper makes the alleged recovery of counterfeit currency notes as well the apprehension and arrest of accused persons, as presented, doubtful and their existing every reasonable possibility of the false implication of the accused persons and plating

of the counterfeit currency notes upon them. In my considered opinion the prosecution has failed to prove its case against the accused persons, beyond reasonable doubt for (1) accused being in conscious possession of said note; (2) accused had knowledge of said notes being counterfeit notes and (3) accused intended to use the said notes as genuine. Accused are held not guilty and acquitted for the offences charged. Their bail bonds are cancelled and sureties are discharged. File the consigned to record room."

The aforementioned judgment leaves no room for doubt that the prosecution failed to prove its case against the accused, because of the weak investigation, led by the applicant.

13. The allegation or apprehension of the applicant that the respondents had made up their mind to censure him, stands belied from the detailed findings of the Learned ASJ in his judgment. The respondents have not merely acted on the observations of the judgment in the trial Court but have adhered to the principles of natural justice by giving sufficient opportunity to the applicant to give his side of the picture which, on all accounts lacked conviction and substance.

14. Perhaps these glaring loopholes in investigation, led the legal department of the respondents to opine against filing an appeal. Such lapses, however inadvertent, do tend to place the prosecution on the back foot. The punishment of censure, under the given facts and circumstances, cannot be considered excessive, and the action of respondents "censuring" the applicant cannot be faulted.

15. The relief claimed for by the applicant in the O.A. is thus, needs no intervention from the Tribunal. The O.A. is dismissed being devoid of merit. No costs.

**(Praveen Mahajan)
Member (A)**

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