Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 447/2013

Order Reserved on: 30.07.2018
Order Pronounced on:01.08.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Udaibir Singh, D-2812,
Age 49 years,
S/o Late Shri Chandan Singh,
R/o 341, Village, Tuglakabad,
New Delhi-44 - Applicant

(By Advocate: Mr. Sachin Chauhan)

Versus

1. Govt. of NCT of Delhi,
   The Commissioner of Police,
   PHQ, IP Estate,
   New Delhi

2. The Joint Commissioner of Police,
   South-Eastern Range through
   the Commissioner of Police,
   PHQ, IP Estate, New Delhi

3. The Dy. Commissioner of Police,
   North-East District, through
   the Commissioner of Police,
   PHQ, IP Estate, New Delhi - Respondents

(By Advocates: Mr. Amit Anand and Mr. Vijay Pandita)

ORDER

Ms. Nita Chowdhury, Member (A):

This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

"(i) To quash and set aside the show cause notice at Annexure A-1, order of punishment of censure at annexure A-2 and order of appellate

authority at annexure A-3 with all consequential benefits including seniority and promotion and pay and allowances.

Or/and

(ii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.

2. The facts of the case are that the applicant was issued a show cause notice dated 09.03.2011 on the following allegations:-

"On perusal of dairy of Motor Cycle checking by ACP/Operation, North East District conducted during the intervening night of 06/07.03.2011, it has been revealed that when he called the motor cycles of PS Jafarabad through Control Room/NE district to come at Seelam Pur Chowk at about 01.40 AM, 06 m/cycles of PS Jafrabad reached after a gap of 45 minutes even after giving three successive reminders through C/Room. On checking of these 06 m/cycles, three of them bearing No.DL-1S-N-56651, D1-IS-S-3424 and DL-1S-N-9064 were found not up to mark and following shortcomings were found:-

1. M/Cycle No. DL-1S-N-5651, was found without flasher, WT and weapon.

2. The flasher & Siren of M/Cycle No. DL-1S-N-3424 were not found in working order.

3. The rider of M/Cycle no.DL-1S-N-9064 was not carrying weapon & WT Set. The riders of M/Cycle could not be satisfactorily reply for delay in reaching Seelam Pur Chowk, which is hardly five minutes distance from PS Jafrabad. When all three m/cycle riders were asked for delay in reaching, all of them replied that they do not have WT set with them, hence they could not get the message.

After that on same day in the same meeting held in DCP office complex by the undersigned in evening on 06.03.2011, while SHO/PS Jafrabad

was asked about the non availability of WT Sets, flasher, siren & weapon with the m/Cycle of his Police Station, firstly he could not tell the exact number of WT sets available in the police station Jafrabad and all are not in working order. He further replied that these sets have been sent earlier to NPL for rectifying their technical default. After that undersigned had given directions to I/C Control Room to visit the police station jafrabad alongwith ACP/Selam PUr to check the status of the sets and I/C control Room submitted his report & narrating therein the following observation:-

1. Only 04 handheld sets (District Net) were found present in Malkhana and all four were in working condition.
2. There are 06 beat net sets (ATS 2500) are in PS jafrabad, out of which one is defective and not repairable. 05 beat net sets are kept in Almirah in Malikhana and are in working order, which should be distributed.
3. Static set is installed in PS Jafrabad, but this set is switched off permanently and not in use SHO/PS Jafrabad is requested to make arrangement to operative this set and provide room.
4. There is some defect in static DM Net set installed in SHO Office, which has been brought in Radio workshop for necessary repair."

3. The applicant submitted a reply to the said show cause notice on 30.04.2011. However, the disciplinary authority, without considering any of the plea raised in his reply, imposed the penalty of 'censure' on him by passing a non-speaking order dated 07.05.2011, which is also confirmed by the appellate authority vide its order dated 23.10.2012.

4. It is also alleged that the applicant being SHO of PS Jafrabad has been arbitrarily picked up for punishment despite the fact that as per night patrolling report of ACP/Ops Cell N.E. district, there were motorcycles without wireless set, weapon and siren in many P.S but still he was picked for the punishment of 'censure' and no other SHO of any PS was given any punishment and thus the applicant being subjected to hostile discrimination.

5. The applicant has relied upon a case of **G.P. Sewalia Vs. Union of India** (OA No. 220/2006) decided on 27.08.2008 whereby it has been held as under:-

> "Non-performance of duties, which may have no element of unlawful behavior, willful in character, improper or wrong behavior, misdemeanor, misdeed, impropriety or a forbidden act, may some time amount to not carrying out the duties efficiently, but the same cannot be construed to be misconduct."

6. He has further placed reliance on the judgment of the Hon'ble Supreme Court in **Union of India & others v. J. Ahmed** (1979)2 SCC 286 holding that *deficiencies in personal character or personal ability would not constitute misconduct for taking disciplinary proceedings. It was further held that negligence in performance of duty or inefficiency in discharge of duty are not acts of 'commission or omission' under rule 4 of the Discipline and Appeal Rules.*

7. The respondents have filed their reply and pleaded that being a first level supervisory officer, this was a gross lacuna found on part of the applicant SHO/PS Jafrabad and he was, therefore, liable for strict against him.

8. It is further submitted that when applicant was called in Orderly Room for his personal hearing on 05.05.2011, he stated that he would be careful in future and that he used to brief the staff but staff failed to comply his order. He also admitted his mistake. As a crime prevention measure, a detail direction/order was issued to detail/deploy at least 6 M/Cycles round the clock for effective patrolling. The use of WT set was essential part of patrolling. But no heed was paid to this order. Now applicant being SHO cannot wash off his hand merely saying that he did convey or transmit it to the staff but staff failing in implementing the direction. It shows clear cut abdication of responsibility and total unsuitability to command as SHO of PS wherein he even could not ensure proper patrolling by M/Cycle.

9. As regards the plea of the applicant that the contentions raised in the reply to the show cause notice have not been dealt with, the respondents have submitted that the reply to the applicant to show cause notice was examined at length by the disciplinary authority and the

contentions were not found convincing. The applicant was heard in person and given an opportunity to explain his non-adherence to import and directions relating to maintenance of law and order. Hence, the punishment of 'censure' awarded to the applicant is legal and totally meets the penalty of the misconduct/lapses committed by him.

10. I have heard both sides and gone through the pleadings.

11. The main issue involved in this case is whether the punishment order dated 07.05.2011 imposing penalty of 'censure' upon the applicant is a speaking one or not. After going through the order, it is found that this order contains all the details of the issue, clear findings and a reasoned order on this basis of which the department has imposed the penalty of censure. As such, this Tribunal does not find any legal infirmity in the punishment order. No doubt, being a SHO of a sensitive Police Station, it was his duty to execute/implement or ensure proper M/Cycle patrolling. It was also his paramount duty to brief/supervise the staff to maintain the M/cycle properly. The applicant should have checked the M/Cycle alongwith the required accessories on regular basis but he left the maintenance as the responsibility of the staff. The Hon'ble

Supreme Court with regard to imposition of penalty has held in **Civil Appeal No. 4722 of 1996 State of U.P. Vs. Nand Kishore Shukla and another (L &S) 867 decided on 11.03.96** as under:-

> "…… *It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment.* ***It is for the Disciplinary Authority to consider what would be nature of punishment to be imposed on a government servant based upon the misconduct proved against him****. Its proportionality also cannot be gone into by the court. The only question is whether the Disciplinary Authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the Disciplinary Authority or by the Appellate Authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere. Under these circumstances, the High Court was wholly wrong in setting aside the order.…*"

12. Thus, in the absence of any procedural illegality and irregularity, in the conduct of DE, no ground to interfere with the impugned enquiry proceedings and orders is made out as found, in view of law laid down by Hon'ble Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620***.

13. With regard to the plea made by the applicant that he has been punished while others have not been punished for the same misdemeanor, the same cannot be a ground to allow this OA. With regard to award of punishment to others as compared to applicant, the Hon'ble Supreme in the case of **Balbir Chand Vs. Food Corporation of India Ltd 1997 (3) SCC 371** has held as under:-

> "…….*It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question.* ***Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they should also be given the lesser punishment*** *lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and taken appropriate decision according to law.…"*

14. The same view was reiterated by the Hon'ble Supreme in the case of **B.C. Chaturvedi Vs. UOI 1995 (6) SCC 749 and it was held as under**:-

> *"Service Law – Writ – Power under Article 226 of the High Court – To impose appropriate*

> *punishment* – ***The High Court/Tribunal while exercising the power of judicial review, cannot normally come to its own conclusion on penalty and impose some other penalty. (Constitution of India, Article 226)***.
>
> *No doubt, while exercising power under Article 227 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review.* ***It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible****."*

15. The Hon'ble High Court of Delhi in the case of **Union of India (UOI) and Ors Vs Ram Dass Rakesh** [WP(C) No. 4211-4213/2006] decided on 24.09.2007 has decided on quantum of punishment. The relevant portion of the judgements is quoted below:-

> *"…5. When we apply these principles to the present case, our conclusion would be that the approach of the learned Tribunal is not correct in law. No doubt, in the first blush it appears that allegations against all three officials are of similar nature, which related to non-payment of 8 money orders to the payees. However, the role of the three officials, it is natural, would be different. Depending upon that if the disciplinary authority in the case of other two officials decided to impose a particular punishment, that would not mean that same punishment is to be meted out to the respondent as well. Before the disciplinary authority of the respondent the charge against the respondent for misappropriation of a sum of Rs. 12,000/- is proved.* ***The charge in itself is a very serious charge and punishment of dismissal on such a charge should not have been***

> ***interfered with unless the penalty is shockingly disproportionate to the proven charge. Even if one proceeds with the assumption that other two officials are given lesser punishment wrongly, that would not mean that lesser punishment should have been given to the respondent as well, who had committed grave misconduct,*** *and when such a case is treated in isolation, even as per the Tribunal, the misconduct justified imposition of this kind of penalty. The concept of discrimination would be alien in such a situation…".*

16. The judgments relied upon by the applicant in the case of **G.P.Sewalia** and **J.Ahmed** (supra) are on different footings and will not come to the rescue of the applicant.

17. In view of the facts of the case and decision in the inquiry proceedings, it is clear that the proceedings have been carried out as per rules and the punishment has been given accordingly. There is no defect in the actions carried out in the disciplinary proceedings and the applicant has been given penalty after following all due procedures and affording an opportunity of being heard. The applicant has only been given penalty of 'censure' which is, in fact, one of the lowest penalities which could have been given in the circumstances. Further, the O.A. has been examined in terms of decisions passed by the Hon'ble Supreme Court and High Court and the ratio laid

down in the said judgements. Accordingly, this O.A. is and it is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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