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

**OA No.3347/2013**

Order Reserved on: 08.08.2018
Order Pronounced on:10.08.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)**
**Hon'ble Mr. S.N. Terdal, Member (J)**

Shri Mahesh Chand Meena,
S/o Late Sh. Ishwar Ram Meena,
R/o C-8, Type-III, Officers Flats,
Near Gat No.5, NPL,
Kingsway Camp, Delhi - Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. The Commissioner of Police,
   PHQ, MSO Building,
   IP Estate, New Delhi

2. The Joint Commissioner of Police,
   Northern Range,
   PHQ, MSO Building,
   IP Estate, New Delhi

3. Deputy Commissioner of Police,
   Outer District, Road No.43,
   Pushpanjali, Delhi-34 - Respondents

(By Advocate: Mr. KM Singh)

**O R D E R**

**Ms. Nita Chowdhury, Member (A):**

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

"(a) Quash and set aside the impugned order placed at Annexure A/1, A/2 and A/3 with all consequential benefits

(b) award costs of the proceedings and

(c) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. The facts of the case are that the applicant was issued a show cause notice dated 18.10.2011 on the following allegations:-

> "An explanation notice was issued to Inspr. Mahesh Chand Meena, D-866, SHO/Kanjhawala vide this office No.3043-44/HAP/Outer District dated 9.3.11 on the allegation that Ramjano w/o Late Sh. Sharif r/o Village Kanjhawala had moved a criminal revision No.25/2010 in the court of Sh. Manoj Jain, ASJ, Rohini courts, Delhi. The Hon'ble Court has passed an order to register a case and directed concerned SHO to carry out the court expeditiously as possible. A copy of this order was also sent to concerned SHO. This order alongwith application was marked to SI Ashok Kumar by SHO/Kanjhawala on 16.10.10 for necessary action. Later, on 12.1.2011, SHO/Kanjhawala had directed Duty Officer to register a case u /s 420/468/471/34 IPC on an application given by the complainant to SHO/K'Wala on 28.7.2009. In his endorsement, SHO/Kanjhawala had not mentioned anything about the Court order. The said order was kept pending for about 2 months unnecessarily by SI Ashok Kumar No.D-397 without any cogent reason. Inspr. Mahesh Meena SHO/Kanjhawala had failed to supervise his subordinate staff and also not mentioned the court order in the FIR and this discrepancy can damage the case during trial.
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> Inspr. Mahesh Chand Meena, D-866, SHO/Kanjhawala received the copy of explanation and submitted his reply which was not found to be satisfactory. Hence this Show Cause Notice for the lapses on his part as

> mentioned in the explanation notice issued to him.
>
> The above act on the part of Inspr. Mahesh Chand Meena, D-866, SHO/Kanjhawala amounts to gross negligence, carelessness irresponsible attitude and dereliction in the discharge of his official duties.
>
> He is, therefore, called upon to show cause as to why his conduct should not be censured for the above said lapse. His reply, if any, should reach this office within 15 days from the date of its receipt failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex-parte on merit."

3. The applicant submitted a reply to the said show cause notice on 16.11.2011 stating that *the Duty Officer had been directed to register a case on very day but inadvertently the undersigned did not mention about the court order and endorse on the applicant submitted by the complainant. It is an inadvertent fault on the part of the undersigned.* However, the applicant was inflicted the penalty of censure vide order dated 21.12.2011 on the ground that the reply filed to the show cause notice is found to be unsatisfactory. Being aggrieved with this penalty of censure, the applicant submitted his statutory appeal dated 12.01.2012 to the appellate authority which has been rejected without due application of mind resulting into gross miscarriage of justice.

4. It is also alleged that non-mention of the Court order and endorsement on the application submitted by the complainant is only by inadvertence and the same has not been done with any ill-motive. As such, aforesaid act of omission cannot be construed as misconduct and does not attract penalty of censure upon the applicant.

5. 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.*

6. The respondents have filed their reply and pleaded that being the supervisory officer, the applicant had failed to supervise his subordinate staff and also not mentioned the court order in the FIR and this discrepancy can damage the case during trial. Therefore, the penalty of censure has rightly been imposed upon the applicant.

7. It is further submitted that the appeal of the applicant was considered and rejected by the appellate authority after considering the defence pleas of the

applicant and also hearing him in orderly room by passing a detailed and speaking order. Hence, the plea of the applicant that his appeal has been rejected on extraneous grounds is not sustainable on the face of this order.

8. We have heard both the sides and gone through the pleadings.

9. The main issue involved in this case is whether the order of the appellate authority dated 23.11.2012 confirming penalty of 'censure' upon the applicant is a detailed one or not.

10. We have gone through the order dated 23.11.2012 of the appellate authority which reads as under:-

> "During orderly room he stated that on receipt of court order passed for registration of a case in the complaint, the same was marked to SI Ashok Kumar for necessary action but the said SI kept it pending regularly for two months without any cogent reason. When the matter came to the notice of the appellant, he directed duty office to register a case u/s 420/468/471/34 IPC but inadvertently, did not mention the facts of the court order in the FIR. He further stated that there was no ill intention on his part. He was asked when the SI did not take any action on the court order and kept it pending unnecessary was he not supposed to direct the SI to take necessary action as he being SHO was it not his duty to supervise all the works and even he should have more particular towards the court orders. At this, he kept mum and only requested to set aside the order.
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> It has been proved from the above discussion that the appellant while posted as SHO/Kanjhawala has not performed his duties in a professional manner. Besides being SHO he was supposed to keep a close

> watch over the working of his subordinates and even he must be particular towards the court orders as well orders of senior officers meticulously in which he failed."

11. It is quite clear from the above order that the appellate authority, while confirming the penalty of censure, has given a clear finding and passed a reasoned order and also given the applicant an opportunity of personal hearing in the Orderly Room. As such, we do not find any lacuna or legal infirmity in the aforesaid order passed by the appellate authority and the same cannot be interfered with by this Tribunal. With regard to the imposition of penalty, the Hon'ble Supreme Court has held in **State of U.P. Vs. Nand Kishore Shukla and another** 1996 SCC (3) 750 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 as also the orders passed, 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 award of lesser punishment awarded to other delinquents, 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 judgment relied upon by the applicant in the case of **J.Ahmed** (supra) is on different footingf 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 hearing him in

the orderly room on 19.10.2012. 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.

18. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

19. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed as such in the obtaining circumstances of the case. No costs.

**(S.N. Terdal)**
**Member (J)**

**(Nita Chowdhury)**
**Member (A)**

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