

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4407/2013

Reserved on 24th July 2018

Pronounced on 31st July 2018

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

ASI Rajbir Singh, age 57 years
s/o late Shri Amrit Singh
H.No.R2-44, L Block
Gali No.2, New Roshan Pura
Najafgarh, New Delhi – 43

..Applicant

(Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCT through
The Commissioner of police (AP)
PHQ, MSO Building, IP Estate
New Delhi
2. The Joint Commissioner of Police (AP)
Northern Range
Through
The Commissioner of Police
PHQ, MSO Building, IP Estate
New Delhi
3. The Addl. Dy. Commissioner of Police
Outer Distt. Delhi
Through
The Commissioner of Police
PHQ, MSO Building, IP Estate
New Delhi
4. The Additional Commissioner of Police
Vigilance
Through
The Commissioner of Police
PHQ, MSO Building, IP Estate
New Delhi

..Respondents

(Mrs. Sumedha Sharma, Advocate)

O R D E R

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main relief:-

“i) To quash and set aside the show cause notice dated 31.3.10 whereby the punishment of censure is proposed upon the applicant at A-1, order dated 24.1.11 whereby the punishment of censure has been confirmed upon the applicant at A-2, order dated 24.9.12 whereby the appeal of the applicant was rejected by the appellate authority at A-3, order dated 8.11.12 received on 3.12.12 whereby the revision appeal of applicant has been turned down by stating Rule 25-A of DP (P&A) is no further applicable and thus the revision petition is not maintainable at A-4 and to further direct the responde the applicant be given all consequential benefits including seniority and promotion and pay and allowances.”

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is working as Assistant Sub Inspector (ASI) in Delhi Police. The Annexure A-1 show cause notice (SCN) dated 06.04.2010 came to be issued to him for alleged inaction on his part in handling two complaints of quarrel / fracas. The contents of the SCN read as under:-

“One Shri Raj Pal Shokin, the complainant S/o late Shri Kaptan Singh, R/o 138, Mangol Pur Khurd, Delhi-110085 has alleged that on 17.9.09 at about 10.30 PM drivers namely Bablu and Mithles of his truck No.HR-63 A 5162 were beaten by Ved Pal Mistri and staff of another truck No.HR-55-A-2917. On reaching the spot, he made a PCR call but the local police of Police Station S.P. Badli threatened him and did not take any legal action into the matter.

During enquiry it is revealed that a PCR call vide DD No.45-A dated 17.9.09 regarding the quarrel on parking of vehicles between the drivers of complainant's truck on one side and the drivers of another truck on the other side was entrusted to ASI Rajbir No.2008/D P.S. S.P. Badli. After obtaining the statement of injured drivers Bablu and Mithles and their MLCs from BJRM Hospital, the ASI kept the call pending vide DDE No.25-B dated 18.9.09 and further reasons best known to him. On 19.9.09 Bablu and Mithlesh on

one side and one Sharaft Ali were found fighting over the incident which took place on 17.9.09. Later on, a case was registered by the ASI vide FIR No.245/09 u/s 160 IPC on the directions of Addl. SHO/S.P. Badli but no action was taken on the call received vide DD No.45-A dated 17.9.09. This clearly shows that the ASI failed to take appropriate action about the incident dated 17.9.09 on which is a serious lapse on his part.

The above act on the part of ASI Rajbir No.2008/D amounts to gross negligence, carelessness, irresponsible attitude and dereliction in the discharge of his official duties.

He is, therefore, called upon the show cause as to why the conduct should not be Censured. His reply, if any, in this regard should reach the undersigned 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 notice will be decided on its merit.”

2.2 The applicant replied to the SCN vide his Annexure A-7 letter dated 10.05.2010. The Additional Deputy Commissioner of Police (I), Outer District, Delhi, i.e., disciplinary authority (DA), not satisfied with the reply of the applicant, vide Annexure A-2 order dated 24.01.2011, imposed the penalty of ‘censure’ on the applicant.

2.3 Aggrieved by the Annexure A-2 penalty order passed by the DA, the applicant filed Annexure A-8 appeal dated 23.02.2011 before the departmental appellate authority (AA), namely, Joint Commissioner of Police, Northern Range, Delhi, who, vide his impugned Annexure A-3 order dated 24.09.2012, dismissed the appeal.

Aggrieved by the impugned Annexures A-1 SCN, A-2 & A-3 orders passed by the DA and AA respectively, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has pleaded the following important grounds:-

3.1 The applicant has unblemished service record of 34 years and no misconduct has been alleged against him. The allegations of ‘failed to take appropriate action’ and ‘failed to act in a professional manner’ do not come under the definition of ‘misconduct’.

3.2 There was a quarrel between the drivers of two trucks, which resulted in squabble and fisticuffs. Two drivers were injured and they were taken to BJRM hospital by the injured drivers. The applicant has taken necessary action as per law. However, at the behest of owners of the trucks, who lodged a complaint against the applicant, the authorities have taken action against the applicant for no fault of his.

3.3 The punishment inflicted upon the applicant is disproportionate to the allegations leveled.

4. Pursuant to the notices issued, the respondents entered appearance and have filed their reply, in which they have broadly averred as under:-

4.1 A PCR call vide DD No.45-A dated 17.09.2009 regarding the quarrel on parking of vehicles between the drivers of complainant’s truck on one side and the drivers of another truck on the other was entrusted to the applicant. After obtaining the statements of injured drivers, Bablu and Mithlesh and their MLCs from BJRM hospital, the applicant kept the call pending vide DD No.25-BN dated 18.09.2009 with him without any cogent reason.

4.2 On 19.09.2009, Bablu and Mithlesh on one side and one Sharafat Ali were found fighting over the incident that took place on 17.09.2009. A case

was registered by the applicant vide FIR No.245/2009 u/s 160 IPC on the directions of Additional SHO/SP Badli but no action was taken on the call received vide DD No.45-A dated 17.09.2009. This shows that the applicant had failed to take appropriate action in the incident dated 17.09.2009, which indeed was a serious lapse on his part.

4.3 The DA, after carefully going through the records and written submissions put-forth by the applicant, came to a decision that the applicant has failed in his duty and accordingly decided to issue Annexure A-1 SCN and thereafter passed the Annexure A-2 penalty order, which was confirmed by the AA.

4.4 The applicant has not placed on record any documentary proof that any senior officer had directed him to keep DD No.45-A pending.

5. The applicant has filed rejoinder to the reply filed on behalf of the respondents, in which he has, more or less, reiterated the averments made in the O.A.

6. On completion of pleadings, the case was taken up for hearing the arguments of the parties on 24.07.2018. Arguments of Mr. Sachin Chauhan, learned counsel for applicant and Mrs. Sumedha Sharma, learned counsel for respondents were heard.

7. Mr. Sachin Chauhan, learned counsel for applicant, besides reiterating the averments made in the O.A., submitted that Annexures A-2 & A-3 orders are non-speaking ones. He further stated that following

second last paragraph of Annexure A-3 order, i.e., AA's order, is not even part of the Annexure A-1 SCN:

“.....When he was asked why case u/s 160 IPC was registered on the another call and why a preventive action was not taken on receipt of first call he could not say anything. He also could not produce any document regarding, direction of any senior for keeping the call pending with him.”

8. Mr. Chauhan vehemently argued that the register of DD entry is in the custody of SHO and the applicant had no access to it, and hence he could not have made any false entry in it. He further argued that some of the assertions made by the Additional C.P./Vig., in his Note (pp.52 to 55), which are mentioned below, have absolutely no basis:-

“7. There is no doubt that ASI Rajbir singh and Inspr. Sanjeev Parmar (No.D-I/409), the then SHO PS S P /Badli (now posted in PCR) have falsely arrested the drivers of the complainant in above case due to the reasons best known to them.

8. IO has prepared final report u/s 173 CrPC in this case which has already been time barred and waiting for clearance from Vigilance branch.”

9. Mr. Chauhan argued that since complaints and counter complaints were made against each other by two rival parties, the FIR lodged could not be taken to the court in time; as a result it became time barred. However, the applicant has not committed any misconduct.

10. *Per contra*, Mrs. Sumedha Sharma, learned counsel for respondents stated that the applicant miserably failed in the discharge of his official duties. She stated that had the applicant acted in the incident of quarrel / fracas that had taken place on 17.09.2009, the second incident of 19.09.2009 could have been prevented. She further argued that it would

not be correct to say that the applicant had unblemished service record; as a matter of fact he was punished in the year 2010, against which he approached this Tribunal in O.A., which was dismissed.

11. I have considered the arguments of learned counsel for the parties and perused the materials placed on record.

12. Undisputedly, on 17.09.2009, quarrel / fracas took place between the drivers of two trucks owned by two separate owners, in which truck drivers were injured and they were taken to BJRM hospital for treatment. The MLCs of those drivers confirmed their injuries. An FIR was also lodged regarding the incident on the complaint of owners of the trucks, the applicant, to whom this case was assigned, ought to have taken prompt action as per law, but apparently, he failed to do so. This is crystal clear from the fact that the same two erring groups again indulged in physical fight two days later. The preliminary inquiry conducted by the Additional CP/Vig. brings out vivid details of the two incidents and establishes the failure of the applicant in discharge of his duties. The very fact that despite lodging of the FIR the applicant could not take the matter to the competent court for subjecting the culprits to justice and due to the lapse of time, the court refused to take cognizance of the case, would go to indicate that there is dereliction of duty on the part of the applicant.

13. In view of the above, I am of the opinion that the applicant deserved punishment of 'censure', which has been inflicted on him by the DA and duly confirmed by the AA. I also do not find this punishment to be disproportionate to the misdemeanor of the applicant.

14. In the conspectus, I do not find any merit in this O.A. It is accordingly dismissed. No costs.

(K.N. Shrivastava)
Member (A)

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