

**Central Administrative Tribunal
Principal Bench**

OA No.452/2013

Order Reserved on:25.07.2018
Pronounced on:31.07.2018

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

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

(By Advocate: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
South-Eastern Range through,
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police,
North-East District, through,
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.

...Respondents

O R D E R

Through the medium of this Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief:

“(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”.

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant initially joined Delhi Police as a Sub Inspector in the year 1989 and was later promoted to the rank of Inspector in the year 2006. On 22.03.2011, a Show Cause Notice (SCN) for alleged handcuffing of two persons in violation of the Hon’ble Supreme Court guidelines on the issue of handcuffing, came to be issued to him which would read as under:

“An enquiry was conducted on News clipping captioned “BEKASOOR BUJRAG KO BETE SANG LAGAI HATHKADI” and “DABANG SHO KE KHILAF UTHNE LAGAI AAWAJ”. During the enquiry conducted by the ACP/P.G. Cell NE, it revealed that on 25.02.2011 a PCR call regarding quarrel at Street No.10 Adarsh Mohalla, Moujpur was received at 7.40 PM vide DD No.19A at PS Jafrabad which was marked to HC Ram Kumar, 159/NE for necessary action. HC got the medical examination of Amit Kumar S/o Jagdish Prasad Sharma and Jagdish Prasad Sharma S/o Ram Chander in handcuff through Ct. Sanjeev No.1401/NE and Ct. Gopal No.3280/NE. The smell of alcohol present in the breath of Amit Kumar. They were released from the Police Station after medical examination. During the enquiry, the allegation of handcuffing him with his son are *prima facie* substantiated. The photograph was verified from complainant and independent witness Shri Ajay Kumar Sharma who clicked it on his mobile phone. Further the clothes (Jacket and Sweater) worn by complainant were verified for identified, so balance of convenience *prima facie* is against SHO/PS Jafrabad. It clearly shows that Insp. Udaibir Singh No.D/2812 SHO Jafrabad is found irresponsible, negligent and careless to perform his official

duty assigned to him as well as clear violation of Hon'ble Supreme Court orders regarding handcuffing the criminals, which is a serious lapse on his part.

The above act on the part of Insp. Udaibir Singh, No.D/2812, SHO/ Jafrabad amounts is grave misconduct, negligence and carelessness in discharge of official duties.

You Insp. Udaibir Singh, No.D/2812, SHO/Jafrabad are, therefore, called upon reach this office within 7 days from the date of receipt of this notice failing which it will be presumed that you have nothing to say in your defence and the matter will be decided ex-parte on merit".

2.2 The applicant replied to the SCN vide his Annexure A-4 letter dated 23.04.2011 in which he stated that the accused persons, namely, Shri Amit Kumar and his father Shri Jagdish Prasad Sharma were creating havoc in the police station and apparently both of them were in inebriated condition. He sent them to nearby hospital for medical examination and as per the MLC of Shri Amit Kumar, it was established that he was in inebriated condition. The applicant also denied that he has ordered handcuffing of Shri Amit Kumar. He has further stated that Shri Amit Kumar in drunken condition was picking up quarrel and hence he was brought by police to the police station and that his father Shri Jagdish Prasad came to the police station on his own with a view to save his son but he wrongly alleged that he too was brought to the police station. He further stated that the complainant was one Shri Ajay Sharma of Resident Welfare Association (RWA) and that the said person in a meeting of the RWA had suggested to the Deputy Commissioner of

Police, North East District, Delhi that FIR should be registered only after getting the consent of the concerned RWA.

2.3 Not satisfied with the Annexure A-4 reply of the applicant, the Disciplinary Authority (DA), namely the Deputy Commissioner of Police, North East District vide its impugned Annexure A-2 order dated 07.05.2011 imposed the penalty of 'censure' on the applicant.

2.4 Aggrieved by the Annexure A-2 penalty order of the DA, the applicant filed his Annexure A-5 departmental appeal dated 10.06.2011 before the Special Commissioner of Police, in which, *inter alia*, he denied that the accused persons, namely Shri Amit Kumar and his father Shri Jagdish Prasad Sharma were handcuffed. He also denied having ordered their handcuffing. The relevant portion of the reply is extracted below:

“9. I have come to know from Shri Ajay Sharma that during enquiries by PG Cell/NE Shri Jagdish Sharma and his son Amit had clearly denied that they had been handcuffed but he was forced to give statement against me and other police officials in this matter.

10. Although Jagdish Sharma and his son Amit were never handcuffed in my presence and this allegation has been denied by the concerned staff also but if it has happened in my absence how can I be held responsible”.

2.5 The Appellate Authority (AA), i.e., Joint Commissioner of Police, North Eastern Range, Delhi, not being satisfied with the contention of the applicant in his appeal, vide its impugned Annexure A-3 order dated 23.10.2012 rejected the appeal and confirmed the punishment awarded by the DA.

2.6 Aggrieved by the Annexure A-1 SCN, Annexure A-2 penalty order and Annexure A-3 order passed by the AA, rejecting his appeal, the applicant has approached the Tribunal in the instant OA praying for the relief, as indicated in para-1 supra.

3. The applicant has pleaded the following important grounds in support of the relief claimed:

3.1 A Preliminary Enquiry (PE) was conducted by ACP (PG Cell), which has been relied upon by the DA in issuing the Annexure A-1 SCN to him. A copy of the enquiry report was never made available to him.

3.2 The applicant was never given any opportunity of being heard and hence the principles of natural justice have been violated.

3.3 The allegations levelled in the SCN are vague and indefinite and thus bad in law. The allegations do not make it clear whether handcuffing was done in the police station or at the place of arrest?

3.4 The applicant has been subjected to hostile discrimination and has been punished for supervisory lapse but the HC Ram Kumar, who had brought the accused to the Police Station, has not been given any punishment.

3.5 The impugned Annexure A-1 and A-2 orders passed by the DA and AA respectively are non-speaking orders and thus are mechanical in nature.

3.6 No misconduct of the applicant has been established, as it is not even alleged against the applicant that handcuffing was done with his consent or knowledge or in his presence. Not carrying out the duties efficiently or deficiency in personal character or ability would not constitute misconduct, as held by the Hon'ble Apex Court in **Union of India v. J. Ahmed**, [(1979) 2 SCC 286] as well as by this Hon'ble Tribunal in the case of **G.P. Sewalia v. Union of India** (OA No.220/2006, judgment dated 27.08.2008).

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which broadly they have made the following averments:

4.1 Annexure A-1 SCN was issued to the applicant for his grave misconduct, negligence, carelessness and dereliction in the discharge of his duties. It is stated that on 25.02.2011 a PCR call regarding quarrel at Street No.10 Adarsh Mohalla, Moujpur was received at 7:40 PM vide DD No.19A at PS Jafrabad, which was marked to HC Ram Kumar for necessary action. The HC got the medical examination done of accused Amit Kumar and his father Jagdish Prasad Sharma. Smell of alcohol was present in the breath of Amit Kumar. The allegation of handcuffing of both the accused was *prima facie* established. It was corroborated from the deposition of the independent witness Ajay Kumar Sharma, who had clicked a photograph of the handcuffing on his mobile.

4.2 After going through the records and evidence placed on file by the complainant, the DA ordered a PE by ACP (PG Cell). On the basis of the available evidence, it was established in the enquiry report that the two accused persons were indeed handcuffed. The direction of the Hon'ble Supreme Court and Hon'ble High Court of Delhi in regard to use of handcuffing had not been followed.

4.3 After receiving the reply of the applicant to the SCN, the DA imposed the penalty of 'censure' on him which has been confirmed by the AA.

4.4 The contention of the applicant that a copy of the PE report was not made available to him is to be taken with a pinch of salt. He could have obtained a copy of the complaint and the PE report through RTI or by making a written request to the respondents to that effect.

5. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties. Arguments of Shri Sachin Chauhan, learned counsel for the applicant and that of Shri Vijay Pandita, learned counsel for the respondents were heard.

6. I have considered the arguments of the learned counsel for the parties and perused the pleadings. From the records, it is clear that on 25.02.2011, Shri Amit Kumar in a drunken state was creating ruckus of street No.10, Adarsh Mohalla, Moujpur. The

MLC of this person has established his inebriated condition on that date. On receipt of the PCR call at the Jafrabad police station, the applicant, as SHO, directed HC Ram Kumar to go to the spot. There is nothing on the record to establish that the applicant ever ordered handcuffing of Shri Amit Kumar and his father. Although the applicant has denied that the two accuses were ever handcuffed but even if it is believed that they were handcuffed as per the photograph taken on his mobile by Shri Ajay Kumar Sharma (an independent witness), there are no document or evidence to prove that the applicant indeed had ordered their handcuffing.

7. Indisputably, the very basis of issuing the Annexure A-1 SCN to the applicant was the PE conducted by ACP (PG Cell). It is stated in the PE report that the findings in the enquiry report were based on recording of some statements. Hence, I am of the view that the DA ought to have made a copy of the PE report available to the applicant together with the SCN and even his request for personal audience with the DA should have been allowed.

8. The basic fact is that the accused Shri Amit Kumar was in inebriated condition and was creating nuisance on the street and, therefore, necessary action was required to be taken against by him by the police in order to maintain public order. After perusal of the records, I find that there is no evidence to establish that the applicant had ever ordered handcuffing of the accused persons.

The handcuffing, if at all, was done by HC Ram Kumar but he has not been penalized. Taking all these aspects into consideration, I am of the view that the punishment of 'censure' imposed on the applicant was not warranted as it is not supported by any evidence.

9. In the conspectus, I allow this OA and quash and set aside Annexure A-1 SCN, Annexure A-2 order of the DA and Annexure A-3 order of the AA. However, liberty is given to the respondents to take disciplinary action against the applicant afresh, if they so desire, and while doing so, the principles of natural justice should be followed and copies of all documents to be relied upon should be made available to the applicant for formulating his defence.

10. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

‘San.’