

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00859/2016 Date of order:- 11.1.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Const. Rakeswh Kumar No.2478/CP s/o Sh. Ajmer Singh, r/o VPO
Kharindwa, Distt. Kurukshetra.

.....Applicant.

(By Advocate :- Mr. P.S.Sullar)

Versus

1. U.T. Chandigarh through Home Secretary, U.T. Secretariat,
Sector 9, Chandigarh.
2. Inspector General of Police, Police Headquarter, Sector 9, U.T.
Chandigarh.
3. Deputy Inspector General of Police, Police Headquarter, Sector
9, U.T. Chandigarh.
4. Senior Superintendent of Police Traffic & Security, U.T.
Chandigarh, Police Headquarter, Sector 9, Chandigarh.

...Respondents

(By Advocate : Shri Arvind Moudgil).

ORDER

Sanjeev Kaushik, Member (J):

Applicant Rakesh Kumar has filed the present Original Application for quashing the orders dated 14.1.2015, 6.7.2015 & 14.7.2016 (Annexures A-8, A-9 & A-10) being non-speaking, cryptic and based on non-application of mind and contrary to the evidence brought on record.

2. Facts as projected by the applicant are that while working as Constable in Chandigarh Police, one complaint dated 29.6.2013 was made by one Shri Dharamvir Arya, against the applicant. On the basis of the complaint, DSP headquarter, U.T.Chandigarh, was entrusted to enquire into the complaint. DSP headquarter enquired into the matter and filed the complaint by directing the officials to remain careful in future vide order at Annexure A-3. While disagreeing with the report of the DSP, respondent no.2 vide order dated 1.10.2013 ordered regular departmental enquiry and a show cause notice dated 30.10.2014 was issued to the applicant. The applicant submitted his reply to the said show cause notice. After holding regular departmental enquiry, DSP Traffic, Administration & East, Chandigarh, submitted its enquiry report and hold six constables of Chandigarh Police guilty for having prepared duplicate coloured copy of identity cards. On the basis of the enquiry report, respondent no.2 vide its order dated 14.1.2015 (Annexure A-8) had ordered punishment of stoppage of two annual increments with temporary effect.

3. Feeling dis-satisfied with the order dated 14.1.2015, the applicant filed an appeal before respondent no.2. Respondent no.2 vide order dated 6.7.2015 had reduced the punishment of forfeiture of one year approved service for increment purpose with temporary effect for one year. The applicant also preferred revision petition before respondent no.2 which too was dismissed vide order dated 14.7.2016 being time barred.

4. The applicant has alleged that despite there being no new substance or fact was brought on record against him, yet again new departmental regular enquiry was ordered against the applicant. The applicant has also alleged that the instructions dated 29.9.2011 upon which the respondents have relied upon cannot be made applicable retrospectively. Hence the present OA.

5. Pursuant to notice, the respondents have filed short reply wherein they have stated that some Chandigarh police personnel are not performing their duty properly and moving outside Chandigarh without any permission. They have further stated that one Shri Dharamveer Arya (CTU conductor) handed over the duplicate (coloured copies) identity cards of six constables of Chandigarh Police. Considering this as grave misconduct, a regular departmental enquiry was ordered. They have further stated that full compliance with the principles of natural justice equity and fair play was adhered to while dealing with the case of the applicant departmentally. They have thus prayed for dismissal of the OA.

6. The applicant has filed a rejoinder by stating therein that the circular dated 29.9.2011 prohibiting of carrying photocopy of identity card cannot be applied retrospectively as the case of the applicant pertains to the year 2007.

7. We have heard the learned counsel for the parties and have perused the pleadings available on record.

8. The learned counsel for the applicant strenuously argued that the applicant in his reply to show cause notice dated 30.10.2014 has specifically stated that he lost his original identity card and a report in this regard was also got registered by him in Police Station, Sector 26, and incidentally, he kept the coloured photocopy to meet any exigencies, as such, he kept the coloured photocopy of the same. He further argued that the applicant has not mis-used his photocopy identity card. He further argued that the instructions dated 29.9.2011 cannot be applied retrospectively as the said incident pertains to the year 2007. He therefore, prayed that the OA may be allowed as prayed for.

9. Mr. Arvind Moudgil, learned counsel for the respondents has argued what has been stated in the written statement.

10. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

11. We are conscious of the fact that in disciplinary proceedings, Courts should not interfere unless it is proved that the respondents have violated the provisions of rules in conducting the enquiry or it is a case of no evidence. It has been held that the Courts will not sit as an appellate authority upon the decision passed by the disciplinary authority, but in exceptional case, the Courts can interfere as noticed above.

12. We have gone through the reply to the show cause notice submitted by the applicant, wherein he has specifically stated that "I have lost my original identity card, and a report in this regard was also got registered by me in the Police Station, Sector 26 and incidentally as a precautionary measure I had kept a coloured photocopy thereof to meet any exigencies due to the loss of the original identity card". After going through the reply submitted by the applicant, we are of the firm view that this aspect of the matter has never been considered by the respondents, rather, the respondents might have put pressure upon the applicant to admit his fault for making photocopy of the identity card.

Generally, to save a document, the general public/government employees got the photocopy of the original document so that in case of its loss/theft of that original document, the photocopy of the same can be used to get duplicate of the said document. Even otherwise, the charge levelled against the applicant is that he is having the forged identity card is also misplaced because it is not that the applicant had tinkled with an identity card of someone else by replacing the information of that person and used his own information on that identity card. Here, the applicant is having the genuine identity card issued by the competent authority of which he is having photocopy, then it cannot be said from any angle that he has forged the document. Therefore, the very basis of issuance of show cause notice is also based on mis-conception. Even the instructions dated 29.9.2011 cannot be made applicable retrospectively.

13. It is now well settled principle of law that departmental proceedings can only be initiated against a government employee, if there is some element of delinquency or gross negligence attached to his misconduct, rather, after going through the pleadings, we are of the view that when the applicant had given in writing that he had lost his original identity card, even then the Inquiry Officer/DSP Traffic, Administration & East, U.T.Chandigarh, has not mentioned this aspect of the matter in the case of the applicant that he lost his original identity card.

14. In view of above discussion, the impugned orders dated 14.1.2015, 6.7.2015 & 14.7.2016 (Annexures A-8 to A-10) cannot legally be sustained and deserve to be quashed. Accordingly, the OA is allowed and the impugned orders at Annexures A-8 to A-10 are quashed and set aside. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- January 11, 2018.

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