

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1252 of 2015

This the 5th day of August 2019

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

H.C.(Min.) Shishu Pal, Age-40 years,
PIS No.27970034
S/o Late Sh. Sardar Singh,
d-29, Amar Colony,
Nangloi, Delhi-41.

....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,
Northern Range,
Through
the Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
3. The Addl. Dy. Commissioner of Police (I)
Outer District,
Delhi
Through
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.

.....Respondents

(By Advocate : Ms. Sangita Rai)

O R D E R (Oral)

Heard learned counsel for the parties.

2. In the instant OA, the applicant is seeking the following reliefs:-

“(i) To quash and set aside the show cause notice dated 22.06.2009, order of punishment of censure dated 16.11.2009, and order of appellate authority dated 25.03.2014 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.”

3. The relevant facts of the case are that applicant while working as Head Constable (Min.) in Delhi Police was along with other two employees issued a Show Cause Notice for censure dated 22.6.2009 on the following allegations:-

“You ASI (Exe.) Mahender Singh Malik No.2821/)D Head Constable Shishu Pal No.5/O.D. and Head Constable (Exe.) Darvesh No.148/OD while posted on the seat dealing the complaints concerned to Police Station S.P. Badli during the relevant period, a complaint of one Mr. Sunil regarding snatching of two mobile phone from his person by the police personnel at Sanjay Gandhi Transport Nagar was received at the Compliant Branch/Outer District on 22.10.2008 from ACP/Alipur for further transmission to ACP/PG/O.D. for an enquiry. But the compliant Branch forwarded this complaint to the ACP/PG only on 13.3.09 i.e. after a gap of 05 months approximately. All of you being the dealing hands of the seat are fully responsible for this inordinate delay.”

3.1 Applicant submitted his short reply to the said show cause notice in which the applicant stated that ACP/Alipur has not mentioned anywhere that the ACP/PGC will conduct further enquiry into the matter. Therefore, the applicant cannot be faulted for any kind of delay in processing this complaint.

3.2 The disciplinary authority passed an order dated 16.11.2009 confirmed the aforesaid show cause notice. The contents of the order of the disciplinary authority read as under:-

“A show cause notice provisionally proposing therein the punishment of Censure was issued to ASI (Exe.) Mahender Singh Malik No.2821/D(PIS No.28770006), Head Constable (Min.) Shishu Pal No.5/OD (PIS No.27970034) and HC (Exe.) Durvesh No. 148/OD (PIS No.28862299) vide this office No.5772/HAP/O.D. dated 22.6.09 under the provisions of Delhi Police (Punishment & Appeal) Rules-1980 on the allegation that while posted in Complaint Branch/Outer District they have been dealing with the complaints pertaining to Police Station S.P. Badli. During the relevant period, a complaint of one Mr. Sunil regarding snatching of two mobile phones from his person by the police personnel at Sanjay Gandhi Transport Nagar was received at the Compliant Branch/Outer District on 22.10.2008 from ACP/Alipur for further transmission to ACP/PG/O.D. for an enquiry. But the compliant Branch forwarded this complaint to the ACP/PG only on 13.3.09 i.e. after a gap of 05 months approximately. Being the dealing hands of the seat, they were fully responsible for this inordinate delay.

They received the copy of show cause notice and submitted their replies accordingly. In his reply, ASI Mahender Singh No.2821/D has stated that being Executive cadre he was assigned with the complaint marking job only. Further he has stated that he has no knowledge of typing and computer also. All the work pertaining to drafting and sending the reply to the complaints was entrusted to Head Constable (Min.) Shishu Pal No.5/OD.

In his reply Head Constable (Min.) Shishu Pal No.5/OD has stated that ACP/Alipur has not mentioned anywhere that the ACP/PG Cell/OD will conduct further enquiry into the matter. As such he was not at fault.

In his reply Head Constable (Exe.) Durvesh No. 148/OD has stated that he was assigned with the duty of maintenance of record of Sub-Division Alipur. All the timed complaints used to be given to Head Constable

(Min.) Shishu Pal No.5/OD for drafting and sending reply to the complaints.

After carefully gone through the relevant record and written submissions putforth by all the delinquents as well as verbal submissions during O.R., the undersigned is of the considered view that :-

1. ASI Mahender Singh No. 2821/D has confirmed the fault of Head Constable (Min.) Shishu Pal No.5/OD. However, the ASI should have been more dutiful in keeping a check on the fault of Head Constable (Min.) Shishu Pal No.5/OD. As such there is a lapse being senior on his part. For this **ASI (Exe.) Mahender Singh No. 2821/D is warned in writing** for the poor control over the negligent act of HC Shishu Pal No.5/OD and to remain more careful and not to repeat such error in future.
2. Head Constable (Min.) Shishu Pal No. 5/OD had nothing fresh to say in his defence except whatever he has submitted in his written submissions. The SCN was on the delay of about five months at his hand. Moreover he was putting blame on others which has been denied by other staffs. He had no documentary support or file movement/dispatch number etc. to support his contention. The statement of other staff of the branch and the comments of the then HAC/OD has also confirmed the laxity on his part. **Hence, the proposed Show Cause Notice issued to him is confirmed and the conduct of Head Constable (Min.) Shishu Pal No.5/OD is hereby Censured.**
3. It seems that Head Constable (Exe.) Durvesh No. 148/OD is not a party to the inordinate delay caused by HC (Min.) Shishu Pal, No.5/OD as well as his negligent act. As the HC was just assigned the duty of maintenance of record. Therefore, **Show Cause Notice issued to Head Constable (Exe.) Durvesh No. 148/OD is hereby filed."**

3.3 Applicant stated that he could not make his appeal against the said punishment order in time as he had personal and official problems as he was subjected to 3 major departmental proceedings and 10 minor departmental proceedings, and hence, applicant has filed his delayed appeal on 1.5.2012. The appellate authority vide order dated 25.3.2014 rejected the applicant's appeal. The contents of appellate authority's order read as under:-

“This is an order in the appeal filed by HC (Min.) Shishu Pal No.5/OD (now 32/PCR) (PIS No.27970034) (hereinafter called the appellant) against the punishment of censure awarded by Addl.DCP Outer District, Delhi, vide order No.11446-70/HAP/OD, dated 16-11-2009.

The facts of the case are that the appellant, ASI Mahender Singh Malik, No. 2821/D and HC Durvesh No.148/OD, while posted in Complaint Branch/Outer District, were dealing with the complaints pertaining to Police Station S.P. Badli. During the relevant period, a complaint of one Mr. Sunil regarding snatching of two mobile phones from his person by the police personnel at Sanjay Gandhi Transport Nagar was received at the Compliant Branch/Outer District on 22.10.2008 from ACP/Alipur for further transmission to ACP/PG/OD for an enquiry. But the Compliant Branch forwarded this complaint to the ACP/PG only on 13.3.09 i.e. after a gap of 05 months approximately. Being the dealing hands of the seat, they were fully responsible for this inordinate delay.

For the above lapse, a show cause notice for censure was issued to the appellant vide No.5772/HAP/O.D. dated 22.06.09. His written reply and oral submissions during orderly room was not found satisfactory by the disciplinary authority and he was awarded the punishment vide order appealed against.

The appellant has received the punishment order appealed against on 25.11.2009. He was supposed to file appeal against this order within 30 days of its

receipt. But he has filed the appeal against this punishment on 01.05.2012 i.e. after a period of above 2 years.

In view of the above, I have gone through the pleas taken by the appellant in his appeal and record available in the file. He could not given any cogent reason about delay in filing the appeal which is grossly time barred for two years and four months.

However, for the sake of natural justice, an opportunity was given to the appellant for personal hearing on 19.02.2014 to adduce anything new in his defence. During personal hearing the plea taken by the appellant was not conceivable as he only repeated the same which had already been written in his appeal. When he was asked specifically about it, he could not give any reasonable cause for inordinate delay of complaint, he kept mum and only requested to vacate the order. Therefore, I am of the view that the appellant has failed to do his duties properly and with sincerity and he also could not given any cogent reason about delay in filing the appeal which is grossly time barred for about two years, hence delay cannot be condoned at this stage and appeal is rejected.”

3.4 The applicant being aggrieved by the aforesaid show cause notice, disciplinary and appellate authorities' orders has filed this OA seeking the reliefs as quoted above.

4. During the course of hearing, learned counsel for the applicant has submitted that the present case is a case of no misconduct as the ACP/Alipur has nowhere mentioned in writing that the report of the local police has to be further marked to ACP-PG (Public Grievance) Cell/OD (Outer District) for further enquiry and once such marking in writing is not there, the applicant was not under any obligation to forward the same to ACP-PG (Public Grievance) Cell/OD (Outer District). This aspect has been brought to the notice of the

concerned authority while giving reply to the explanation sought from him. The applicant has also taken the same stand while giving reply to the show cause notice.

4.1 Counsel for the applicant drew our attention to page 17 of the paperbook, which is an enquiry report regarding the complaint of one Mr. Sunil, the contents of which reads as under:-

“Subject : Reg Complaint Mr. Sunil.

Ref. No.TS-88/ACP Narela dt. 30/9/08

E.O. – Ispr. Sanjeev Kumar

Enquiry Report:-

Sir,

It is submitted that enquiry in to the matter has been conducted and many try has been made to contact on the Telephone No given in DD entry but no contacted could be made of that number. However, the local enquiries also conducted at Mukarba Chowk but no such incident found to be commit. **Hence, the complaint seems to be anonyms. The same may be filed pl.**

Submitted please.

Sd/-
Sanjeev Kumar
Enquiry/Inspr.
PS S.P. Badli.
Delhi
21.10.2008”
Emphasis supplied

Counsel for the applicant further submitted that the aforesaid report was marked by the said EO to SHO/S.P. Badli, who signed only and forwarded to ACP/Alipur, ACP/Alipur has also signed on the same and further all the authorities failed

to consider that ACP/Alipur had signed the report of Inspector/PS Badli, who recommended to file the complaint in his enquiry report. He further submitted that as per prevailing practice the anonymous/ pseudonymous complaints, which were received duly enquired and filed by concerned SDPO (Sub-Division Police Officer), did not require any further action and the same were kept in bundle of filed complaints and the same procedure had also been adopted by the applicant in the present/said complaint matter. As such there was no direction given by his superior authorities to forward the same to ACP-PG (Public Grievance) Cell/OD (Outer District) at any point of time.

4.2 Counsel further submitted that applicant has been subject to hostile discrimination inasmuch as other co-delinquents alleged to be involved in the said incident were let off without giving any punishment whereas the applicant was awarded the penalty of censure despite the fact that there is no misconduct committed by the applicant in the said matter.

4.3 Counsel again reiterated that allegation against the applicant is of delay in forwarding the complaint from ACP/Outer District to ACP/PG but on the contrary the applicant was not supposed to forward to ACP/PG until and unless the same report of ACP/Outer District being specifically marked to ACP/PG by ACP/Outer District for further enquiry.

4.4 Counsel for the applicant also submitted that keeping in view the above said facts clearly establish that the orders passed by the disciplinary and appellate authorities are absolutely non-speaking as the same did not deal with the specific submissions raised by the applicant in his reply to the show cause notice as well as appeal and, therefore, the show cause notice and the orders of the disciplinary and appellate authorities are bad in law.

4.5 Counsel for the applicant also placed reliance on the decision of this Tribunal in OA No.220/2016 (**GP Sewalia vs. UOI**) wherein it has been held that “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.” He also placed reliance on the decision of the Apex Court in the case of **Union of India and others vs. J. Ahmed**, (1979) 2 SCC 286 wherein it has been held that “Lack of leadership, inaptitude, lack of foresight, lack of firmness and indecisiveness which are deficiencies in the personal character or ability of a Government servant would not by themselves constitute misconduct for the purpose of disciplinary proceedings.”

5. On the other hand, counsel for the respondents by referring to their counter affidavit submitted that orders passed by the disciplinary and appellate authorities are legal, justified and just right as well as commensurate to the gravity of misconduct committed by the applicant. It was further submitted that for the sake of natural justice, both the authorities have given opportunity of personal hearing to the applicant to enable him to adduce anything new in his defence but during personal hearing, the applicant has taken the same pleas as taken by him in his appeal. However, the same were not found convincing and accordingly the appeal was rightly rejected. Further, it was submitted that the appeal was admittedly a time barred appeal but the appellate authority rejected the same not only on the ground of delay but also on merit.

5.1 Counsel also submitted that a draft reply in this case was required to be sent to DCP/Vigilance. Hence, a draft reply in this case was put up before the then Addl. DCP-I/OD, who was not satisfied with the report of local police and verbally ordered to get it checked through P.G. Cell/OD. However, the matter was referred to P.G. Cell/OD on 13.3.2009 i.e. after an inordinate delay of about 05 months, hence, the disciplinary authority found the applicant at fault as he was the dealing hand of the seat and after following the due procedure in the matter.

5.2 Lastly, counsel for the respondents submitted that the instant OA deserves to be dismissed by this Tribunal in the facts and circumstances of this case.

6. Heard the learned counsel for the parties and carefully perused the pleadings available on record. It is observed that respondents have not disputed the contention of the applicant as noted in paras 4 and 4.1 above. In such scenario, this Court does not find anything wrong in the conduct of the applicant, while filing the said complaint as respondents have themselves admitted and not denied that said report submitted by Inspr. Sanjeev Kumar was placed before the SHO/S.P. Badli, who signed only and forwarded to ACP/Alipur and ACP/Alipur has also signed on the same. The respondents have failed to establish that there was any direction given to the applicant to forward the said complaint to P.G. Cell/OD for further enquiry. The applicant being a Head Constable cannot take such decision *suo moto* in any matter. Although respondents have stated that a draft reply in this case was put up before the then Addl. DCP-I/OD, who was not satisfied with the report of local police and verbally ordered to get it checked through P.G. Cell/OD but the matter was referred to P.G. Cell/OD on 13.3.2009 i.e. after an inordinate delay of about 05 months. The applicant has disputed this fact that he had been given any such verbal direction in the matter by any of his superior authority. Nor

the respondents have produced any document, which may prove that the applicant was given direction to forward the matter to P.G. Cell/O.D. for further enquiry. This aspect has not at all been dealt with by the disciplinary as well as appellate authorities while considering the matter. It is to be noted that appellate authority while rejecting the appeal of the applicant has also gave its finding on the merits of the case as such this Tribunal is not inclined to accept the alternative conclusion of the appellate authority i.e. the appeal of the applicant is barred by limitation in view of the fact that appellate authority not only gave an opportunity of personal hearing to the applicant but has also gone through the contents of the appeal. This Tribunal found that neither the disciplinary authority nor the appellate authority gave its reasoned and conclusive findings on the aforesaid aspect of this matter.

7. It is to be noted that in this matter, the applicant was only made responsible for the alleged lapse and accordingly he was awarded the punishment of censure but others who were also alleged to have been involved were not awarded any such punishment but they were let off by giving written warning or simply let off. As such in this matter, the stand of the respondents is totally unsustainable in the eyes of law, as this Tribunal is of the considered view that allegations leveled against the applicant by the show cause notice has no basis

at all and as such the act of the applicant does not come within the ambit of misconduct alleged to have been committed by the applicant.

8. In the facts and circumstances of this case and for the reasons stated hereinabove, although, this Tribunal at the first instance thought it fit to remit this matter to the appellate authority to re-consider the entire matter afresh but since the incident of this case was of 2009 and now we are in 2019, hence, this Tribunal felt it appropriate to quash the impugned show cause notice and consequently the impugned orders passed by the disciplinary and appellate authorities are also liable to be quashed.

9. In the result, the OA is allowed. Accordingly, show cause notice dated 22.06.2009, order of punishment of censure dated 16.11.2009, and order of appellate authority dated 25.03.2014 are quashed. The applicant is entitled to all consequential benefits arising out of quashing of the aforesaid impugned orders in accordance with rules on the subject. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/