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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1922/2003.

New Delhi this the 5th day of April, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
~~MR. S.A. SINGH, MEMBER (ADJUV)~~ *h*

Inspr. Aas Mohammad,
s/o Sh. Yashin Khan,
R/o B-3/111, Yamuna Vihar,
Delhi-110 053.

-Applicant

(By Advocate Shri Ashwani Bhardwaj)

-Versus-

1. Commissioner of Police,
Police Head Quarters,
Indraprastha Estate,
New Delhi.
2. Senior Additional Commissioner of Police,
(Intelligence),
Police Headquarter,
Indraprastha Estate,
New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns a show cause notice of minor penalty of censure dated 17.12.97, order dated 20.1.1998, confirming the censure as well as appellate order dated 16.4.2003, affirming the punishment.

2. It is not disputed that the regular SHO of PA Chandni Mahal proceeded on leave and applicant, the additional SHO was looking after the work of the PS w.e.f. 27.12.96.

3. On 26.12.96 on account of quarrel matter was reported to ASI Shafiq Ahmed of PS Chandni Mahal being on picket duty who proceeded to spot but did not take an effective action. Later, on 27.12.96 at about 4.50 p.m. Kanshi Ram, accompanied by two of his associates namely

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(2)

Sheer Ahmed and one more person later on identified as Dina Nath and stabbed him, Chander Shekhar was removed to the L.N.J.P. Hospital by Dinesh Kallu but succumbed to the injuries. A case FIR No.248/96 under Section 302/34 IPC was registered. A complaint was made by Satish Kumar Gupta where an enquiry was gone into by the crime branch but later on took over the investigation and it has been found that either on 26.12.96 or 27.12.96 the concerned officer neither took effective action nor handled the investigation properly. As applicant was looking after the work of SHO it was found that he lacked in supervision. Accordingly, recommendations have been made against applicant and SI Virender Singh as well as ASI Shafiq Ahmed for their failure to take proper action. A major penalty culminated against SI Virender Singh. A show cause notice was issued to applicant on 11.8.97, proposing a minor penalty of censure for his ineffectiveness and lack of supervision as ASI Shafiq Ahmed though visited the spot on 26.12.96 had not taken any effective action against the aggressive party, which resulted in murder on the next date. The aforesaid show cause notice was responded to. By an order dated 7.10.97 DCP of Central District withdrawn the notice.

4. Applicant was again served with a show cause notice on 17.12.97 for his failure to properly supervise the investigation of the case as on 27.12.96 neither the blood was lifted from the spot nor the spot was got photographed.

5. A representation was made against the show cause notice, which culminated into a minor penalty and on appeal the same was confirmed, giving rise to the present OA.

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(3)

6. Learned counsel for applicant contends that having served a show cause notice and withdrawing it without any reservation, on the same allegations the second show cause notice amounts to double jeopardy.

7. It is further stated that no misconduct is attributable to applicant as he alongwith DCP, Central District went on the spot and as there was no blood seen on the spot on a crowded place and as the crime branch cannot lift the sample Additional DCP having satisfied about the prompt response of applicant and his devotion to duty and as there was no lack of supervision withdrew the show cause notice.

8. Lastly, it is contended that the crime report by the crime branch has not been served upon him, which is the basis of the show cause notice and punishment. This has prejudiced applicant and he places reliance on a decision of the Apex Court in **Kashi Nath Dikshita v. Union of India**, 1986 (3) SCC 229.

9. On the other hand, respondents' counsel states that the earlier show cause notice was issued by the Central District whereas applicant was transferred to the Special Branch, as such a fresh show cause notice has been issued.

10. On merit it is stated that though the applicant was at the spot yet did not lift the blood and the place was not even photographed and as no justification has come forth in his reply or appeal, the allegations are

proved and keeping in view his lack of supervision he has been awarded a minor penalty whereas SI Virender Singh has been inflicted a major punishment.

11. I have carefully considered the rival contentions of the parties and perused the material on record.

12. The earlier show cause notice pertained to an incident of 26.12.96 whereas ASI Shafiq Ahmed has failed to take preventive action which resulted in murder on 27.12.96. This was lack of supervision attributed on the part of applicant. The Additional DCP who along with applicant went on the spot and withdrew it finding no misconduct. Applicant was thereafter transferred to special Branch which is another reason that the show cause notice was issued again. However, the second show cause notice cannot be termed as without jurisdiction as the allegations levelled therein were different from the earlier show cause notice. In the second show cause notice, the allegations were lack of supervision pertained to 27.12.96, when neither the blood sample was lifted nor photograph of the spot was taken. It is settled principle of law that on different allegations even if the earlier show cause notice has been withdrawn, a fresh show cause notice be issued.

13. In so far as non-furnishing of crime branch report is concerned neither in response to the earlier show cause notice nor to the second show cause notice any demand has been made for supply of the crime branch report. Though the decision in Kashi Nath's case (supra) is a valid

proposition for a departmental enquiry but for a minor penalty unless a request is made no prejudice is caused to applicant. Moreover, I find that copy of the report is annexed with the OA as Annexure A-4, which shows that the same was in possession of the applicant and this ground is an after thought which cannot be sustained.

14. Moreover, the lack of supervision alleged in the second show cause notice not only dealt with for not lifting the sample of blood but also failure of the I.O. to photograph the spot, no explanation has come forth in the reply or appeal of applicant. This clearly establishes that in so far as having not photographed scene, a misconduct is established. The lack of supervision on part of Additional SHO(applicant) who was officiating as SHO of P.S. Chandni Mahal is established beyond any doubt. Taking test of a common reasonable prudent man this is sufficient to uphold the minor penalty. Moreover, SI Virender Singh has already been awarded a major penalty.

15. I do not find any procedural illegality or infirmity in the orders passed by the disciplinary as well as appellate authorities, which are reasoned taking into consideration the contentions of applicant. Accordingly, for such lack of supervision, I find the minor penalty as proportionate to the charge.

16. In the result, for the foregoing reasons, OA does not want any interference and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)