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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2850/2003

New Delhi, this the 13th day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

SI Arun Chauhan
(PIS No.16950198)
r/o F-3/76
East Vinod Nagar
Delhi - 91. ... Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Delhi Secretariat
IP Estate, Delhi.
2. Commissioner of Police
Police Head Quarters
IP Estate, New Delhi.
3. Addl. Commissioner of Police
Rashtrapati Bhavan
New Delhi. ... Respondents

(By Advocate: Sh. S.Q.Kazim)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Arun Chauhan) is a Sub-Inspector in Delhi Police. By virtue of the present application, he seeks to assail the order passed by the disciplinary authority and of the appellate authority. The disciplinary authority vide order of 7.5.2002 imposed the penalty of forfeiture of one year approved service by deferment of an increment temporarily for a period of one year and the appeal has since been dismissed.

2. The relevant facts are that departmental proceedings had been initiated against the applicant vide order dated 6.6.2000 on the allegation that on 2.2.1999, one Smt. Shabnam Kapoor with her husband,

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reported an incident of theft at Police Station Anand Vihar between 11 and 12 AM on 31.1.1999. The complaint basically was made against their maid servant and it was made to the then Duty Officer, Assistant Sub-Inspector Geeta Rani, who directed them to meet the applicant who was the In-charge of Police Post Karkardooma. The applicant recorded the statement of the complainant on a plain paper and raided the Jhuggis of Najma and Nasima for recovery of stolen property without registering the case. The complainant asked for a copy of the FIR and the applicant had replied that statement itself was an FIR. Later on, a complaint was submitted by the complainant about the incident but the FIR was registered after intervention of senior officers.

3. The precise charge framed, during the course of the inquiry, was:

"I, H.M.Meena, Enquiry Officer, DCP/R.P.Bhawan, New Delhi charge you Inspr. Ashok Kumar Saini, No.D-I/728, SI Arun Chauhan, No.D/796 and W/ASI Geeta Rani, No.249/E, 2546/Sec. that while posted in PS Anand Vihar, East Distt., Delhi on 2.2.99 at about 11/12 noon Smt. Shabnam Kapoor wife of Sh. Puneet Kapoor, R/O-87, Sresth Vihar, Anand Vihar, Delhi visited PS alongwith her husband and reported incident of theft in her house on 31.1.99 by her maid servant Nazma.

W/ASI Geeta Rani, No.249/E, 2546/Sec. was on duty as Duty Officer, PS Anand Vihar (from 8 AM to 4 PM) listened to the complainant and was required to register a criminal case (FIR) against the maid servant Nazma under the appropriate section of law, instead she directed the complaint to meet SI Arun Chauhan (I/C PP Karkardoom).

SI Arun Chauhan, No.D/796 recorded the statement of the complainant Smt. Shabnam Kapoor in the presence of her husband Sh. Puneet Kapoor and conducted a raid in the Jhuggies of Nazma



and Naseema at Seema Puri to recover the stolen jewellery without registering a criminal case at PS Anand Vihar against the maid servant under the appropriate section of law. Moreover, on demand of copy of FIR by the complainant, you denied to provide the same by saying that her statement was itself a copy of FIR.

Inspr. A.K.Saini, No.D-I/728 (the then SHO PS Anand Vihar, Delhi) also failed to supervise the matter and did not direct the concerned staff i. e SI Arun Chauhan and W/ASI Geeta Rani to register a case under the appropriate section of law even after receiving a written complaint vide Dy. No.S-91, dated 22.5.99, PS Anand Vihar, Delhi. A case vide FIR No.226/99 dated 11.7.99 u/s-381 IPC, PS Anand Vihar, Delhi could only be registered after the direction of senior officers.

The above act on the part of you Insp. Ashok Kumar Saini, SI Arun Chauhan & W/ASI Geeta Rani amounts to gross misconduct, negligence, carelessness, professional incompetence and dereliction to discharge of your official duties which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules-1980."

4. The inquiry officer held the applicant responsible for conducting the investigation into the theft case without getting the case registered. It is in pursuance of this finding that the above said penalty had been imposed.

5. The application has been contested.

6. At the outset, it deserves a mention that only two arguments had been raised during the course of submissions:

- a) the other persons, namely, Officer In-charge of the Police Station has been censured while ASI Geeta Rani has been



exonerated but applicant has been made to suffer with a major penalty. Thus, he is being discriminated.

- b) The applicant had been told by the Officer In-charge of the Police Station and therefore he presumed that First Information Report had already been recorded. It was not his duty to get the FIR registered and in that backdrop, the applicant cannot be held responsible.

7. So far as the first argument of the learned counsel for the applicant is concerned, we do not find that there is any merit in it. Equality has to be amongst the equals. The dereliction of duty on the part of the applicant, if one is to state in few lines, is that he conducted the investigation into a theft case without getting the case registered. As against the others, the assertions were different because against ASI Geeta Rani, it had been asserted that she did not record FIR despite being informed about a cognizable offence and as against the Officer In-charge of the Police Station, the assertion was that he had not ensured registration of the FIR into a cognizable offence. Therefore, they were totally different allegations against different persons. The penalty if any to be awarded, had to commensurate with the nature of misconduct/dereliction of duty. In face



of the aforesaid, the applicant indeed cannot be held to state that excessive penalty has been imposed or that he has been discriminated.

8. It was the second argument which was being pressed vehemently on behalf of the applicant. The learned counsel urged that it was not the duty of the applicant to record the FIR. It was the duty of the Duty Officer and further it is the Officer In-charge of the Police Station to ensure that there is no investigation without FIR. Since the applicant had been told in this regard by the Officer In-charge of the Police Station, he had gone ahead with the investigation.

9. Learned counsel for the applicant has drawn our attention to certain extracts from the statements recorded during investigation. He referred to the statement of Sh. Puneet Kapoor, PW-3 who had stated that the Duty Officer had talked on telephone and they were asked to go to Police Post Karkardooma. He further stated that later the applicant had talked to the Officer In-charge of the Police Station and thereafter had conducted the raid. According to the witness, the Officer In-charge was already aware of the facts.

10. Almost on similar lines had been the statement of Smt. Shabnam Kapoor, PW-4. At best, this fact would only establish that the complainant and her husband had been directed to go to the present

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applicant but that would not exonerate the applicant of the alleged misconduct attributed to him. This fact would be noticed hereinafter.

11. Before proceeding further, we deem it necessary to refer to the Standing Orders that were brought to our notice by the learned counsel for the applicant. Vide Standing Order No.145 issued by the Commissioner of Police, indeed as soon as the information is brought to the notice, it should be recorded without waiting for the appearance of the complainant. This has been so directed because of the importance of recording of the First Information Report at the earliest. This is done to avoid later addition of facts. The Standing Order further provides that whenever a complainant visits the Police Station, his statement should be recorded under column "Police Action" of the FIR and if a cognizable offence is disclosed, it should be straightway recorded in a plain and simple language in the FIR Register.

12. Similarly, under the Standing Order No.33, the duties of the Duty Officer in the Police Station have been prescribed and one of the important duties is that FIR should be registered and should be properly maintained and he should record the First Information Report.

13. The duties of the Officer In-charge of the Police Station are mentioned in Standing Order No.239. It is he who is overall in charge of the Police Station and he is to make sure that Duty Officer and others are properly performing their



duties.

14. At this stage, reference to the Punjab Police Rules would be in the fitness of things. The same necessarily should be read along with the Code of Criminal Procedure, 1973. Sub-Section (1) of Section 154 of the CrPC makes it clear that with respect to a cognizable offence, information must be recorded and read over to the complainant. It reads as under:

"154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

15. It is only after the FIR is recorded that investigation can be effected in terms of Section 157 of the Code of Criminal Procedure. We hasten to add that we are not presently concerned where from the information was received or otherwise an investigation has taken place or some such offence disclosed.

16. The Punjab Police Rules Rule 25.1 of Chapter XXV tells us powers to investigate. According to that, an officer in charge of a police station is empowered to investigate any cognizable offence but he can also depute a subordinate to do so. The relevant portions are:

"25.1 Powers to investigate.-(1) An officer in charge of a police station is empowered by section 156, Criminal Procedure Code, to investigate any cognizable offence which occurs within the limits of his jurisdiction.

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(2) He is also empowered under section 157(1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measure for the discovery and arrest of the offenders. Any police officer may be so deputed under this section, but where a police officer under the rank of assistant sub-inspector is deputed the investigation shall invariably be taken up and completed by the officer in charge of the police station or an assistant sub-inspector at the first opportunity.

(3) An officer in charge of a station shall also render assistance whenever required to all officers of the Criminal Investigation Department working within his jurisdiction."

17. The case diaries have to be maintained in terms of Section 172 of the Criminal Procedure Code which requires that a case Diary has to be maintained and submitted daily. The relevant Punjab Police Rules mentioned in Chapter XXV reads:

"25.53. Case diaries.-(1) Section 172(i), Code of Criminal Procedure requires that a case diary shall be maintained and submitted daily during an investigation by the investigating officer. In such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by section 172(i), Code of Criminal Procedure.

(2) Case diaries shall be as brief as possible: shall not be swollen with lengthy explanations and theories, and shall be written either in English or in simple Urdu.

Only such incidents of the investigation shall be included as have a bearing on the case.

(3) Detailed lists of stolen property, or of property seized in the course of a search, shall be entered in the first case diary submitted after the facts relating to such property were reported to, or discovered by, the investigating officer.




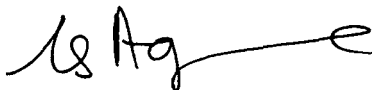
(4) The fact that copies of the record prepared under the provisions of section 165 or 166, Code of Criminal Procedure, have been sent to the nearest magistrate empowered to take cognizance of the offence shall also be noted."

18. When the act of the applicant is examined in the light of the above said facts, it is obvious that it cannot be stated that he can be exonerated. The reasons are obvious.

19. The applicant contends that he had been told to investigate and he thought that FIR had already been recorded. When that was so, there was no need to again to record the statement of the complainant and inform her that the statement by itself was an FIR. This very fact clearly shows that the applicant was aware that the FIR has not been recorded. In addition to that, though the applicant proceeded and conducted raid pertaining to the complaint of the theft, no case diary is shown to have been maintained by him. He had to maintain the Daily Diary in this regard and on that he necessarily had to mention the FIR number. Even if he believed that the FIR had already been recorded, he should have mentioned the number of the FIR on any such proceedings if he was to conduct investigation. All these facts prompt us to conclude that there was no FIR that had been recorded. The applicant must be aware that the same had not been recorded. In the absence of FIR, he could not have conducted the investigation. We find no reason to conclude that the impugned order suffers from any legal infirmity to prompt us to interfere.

20. For these reasons, the OA being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman