
(2018) 10 CAT CK 0148

In the Central Administrative Tribunal

Case No : Original Application No. 3397 Of 2016

Dinesh Kumar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Delhi Police Act, 1978 — Section 21(j)

Citation : (2018) 10 CAT CK 0148

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, Alka Sharma

Final Decision : Disposed Of

Judgement

1. Heard Sh. Ajesh Luthra, learned counsel for applicant and Ms. Alka Sharma, learned counsel for respondents.

2. The applicant pleads that he was working as Sub-Inspector at Police Station (PS) Seelampur under Delhi Police. While on duty on 12.07.2013 a call was received at 15:53 hours that there is a quarrel near Paan shop at Shishodiya Masjid, Shastri Park. The applicant reached the spot at 16:36 hours, i.e. after 43 minutes, however, this was taken to be considerable delay and the respondents had issued a show cause notice on 22.07.2013.

He had submitted a reply to this show cause notice wherein he brought out that on receipt of the information he had proceeded to the Paan shop which was little away from Shishodiya Masjid wherein he was advised that there was no such quarrel. At that stage, he realised that the place was lying under Police Station Jafraabad. Thereafter he reached the Shishodiya Masjid located in the area of Police Station Seelampur and accordingly, it took him about 43 minutes.

The delay thus occurred on account of two similar names and not on account of any inaction on his part.

While tendering his explanation, he had also requested for a personal hearing. However, without according this personal hearing he was imposed a punishment of censure vide order dated 01.10.2013.

It was further pleaded that as per this punishment order even though the timing for call and his reaching at site is indicated to be 15:53 hours and 16:36 hours, yet the delay is indicated as 1 hour 23 minutes which was considered to be a considerable delay and accordingly punishment of censure was imposed. This punishment order is silent about in what way his explanation was not found satisfactory. Subsequently, an appeal was preferred to the Appellate Authority, who did consider the explanation given and a personal hearing was also accorded, however, still the order dated 09.12.2015 was passed by the appellate authority rejecting his appeal. The Appellate Authority also, while indicating the time of call and reporting at site at 15:53 hours and 16:36 hours, still the delay period was indicated as 1 hour 23 minutes which was reckoned to be considerable by the appellate authority. Since this inaccuracy about time being reckoned as 1 hour 23 minutes continued even at Appellate Authority level, instead of actual 43 minutes, the applicant pleads that the respondents, had acted in a mechanical manner under a mental assessment of delay of 1 hour 23 minutes against actual 43 minutes, and hence punishment imposed cannot be sustained.

3. The applicant brought out the Delhi Police Establishment Rules which prescribe the following punishments and procedure for implementing the same:

"5. Authorised punishments. - The Delhi Police Act, 1978 prescribed the following penalties:

(i) Dismissal, (ii) Removal from service, (iii) Reduction in rank [for a specified period], (iv) Forfeiture of approved service, (v) Reduction in pay, (vi) Withholding of increments, (vii) Fine not exceeding one month's pay, (viii) Censure, (ix) Punishment drill not exceeding 15 days or fatigue duty or any other punishment duty to Constable only.

6. Classification of punishments and authorities competent to award them. - (i) Punishments mentioned at Serial Nos. (i) to (vii) above shall be deemed 'major punishment' [and may be awarded by an officer not below the rank of the appointing authority or above] after a regular departmental enquiry.

(ii) Punishment mentioned at Serial No. (viii) shall be called 'minor punishment' and may be awarded by the authorities specified in sub-section (j) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition, if any for which opportunity shall be afforded on request."

4. It was pleaded that for imposing the punishment of censure, grant of oral hearing was necessary as per this rule. The disciplinary authority did not follow this procedure.

5. Further, the punishment of censure even though minor, remains on the service record and may jeopardise the future career progression and accordingly the punishment of censure has been assailed in the instant OA on merits as well as procedural grounds and non-application of mind.

6. The respondents brought out that the applicant was posted in PS Seelampur and once he received the directions to reach the spot of quarrel, he acted in a careless way and reached the spot, even though carrying the same name but it was lying in a different police station territory. It was only thereafter that he reached the correct place of quarrel in his assigned jurisdiction i.e. PS Seelampur. Being a responsible Police Officer, the applicant was expected to know the area and since he was given a call he ought to have gone to the spot within his jurisdiction of PS Seelampur and not that of other PS Jafrabad. This act being of a careless nature, and the occurrence of quarrel being in a sensitive area, he was issued a show cause notice and was in turn issued a punishment of censure.

7. The respondents also pleaded that the opportunity of hearing was also extended by the appellate authority who had given a detailed order considering the explanation submitted and accordingly the punishment imposed is in order and needs to be upheld. The OA submitted by the applicant needs to be dismissed.

8. The matter was heard at length. The disciplinary and appellate proceedings are a necessary part of the administration wherein the delinquent employees are required to be taken up and punished as per the merits of the case. In the instant case, it is admitted that the call for action was received at 15:53 hours whereas he reached the site at 16:36 hours that is after 43 minutes. However, this material fact has somehow been lost sight of and mechanically the time delay has been indicated to be 1 hour 23 minutes by the disciplinary authority as well as the appellate authority. The disciplinary authority who is the first stage for deciding the matter and punishment, did not grant him opportunity of personal hearing, even though it was requested by the applicant and it was prescribed also under the relevant rules as brought out in para 3 above.

9. The mental appreciation in respect of time delay, 1 hour 23 minutes was factually wrong, at the level of disciplinary authority and it continued to be so even at the level of appellate authority. It thus appears logical that while deciding the punishment as well as the appeal, this time delay of 1 hour 23 minutes may have played in the mind of the two authorities rather than the actual delay of 43 minutes.

10. In the event, the punishment order cannot sustain. Accordingly, the punishment order issued on 01.10.2013 as well as the order by the appellate authority dated 09.12.2015, stand quashed. The respondents are given liberty to proceed ahead in the case from the stage of considering the explanation already submitted by the applicant and granting him personal hearing as prescribed and

proceeding ahead by the disciplinary authority. OA is disposed off accordingly. No order as to costs.