
(2019) 08 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 1563 Of 2018

Inspr. Krishan

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 24(3)
Central Civil Services Conduct Rules, 1964 — Rule 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

Citation : (2019) 08 CAT CK 0077

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Sachin Chauhan, Harvinder Oberoi

Final Decision : Dismissed

Judgement

1. The applicant Inspr. Krishan Kumar was S.H.O. of Police Station Bhajanpura when surprise check of morning pickets of North-East District Delhi was done on 21.09.2016. During checking certain shortcomings were found in the pickets of various police stations including C-Block picket under Bhajanpura Police Station where it was found that only one Constable Prem Chand was present. It is an admitted fact that there were instructions for the SHOs concerned for deployment of at least two Constables in each picket. Therefore, in violation of these instructions, for lack of supervision, the applicant was served with Show Cause Notice (SCN) dated 27.10.2016 (Annexure A-1) to which he replied on 21.12.2016 (Annexure A-4). The explanation of the applicant was not found satisfactory and vide order dated 10.03.2017 (Annexure A-2), he was awarded the punishment of censure. His appeal against this order was also rejected vide order dated 01.11.2017 (Annexure A-3) by the Appellate Authority.

2. It is the contention of the applicant that deployment of only one constable at the picket was due to shortage of staff at PS Bhajanpura, there being only 52 male constables and out of them 18 constables were to be detailed at PP Yamuna

Vihar, Delhi. He has further stated that this may be called inefficiency but no case for misconduct is made out as is held by the Tribunal in the case of G.P. Sewalia vs. Union of India & Ors. [OA No.2210/2006 decided on 27.08.2008].

He has also placed reliance on the decision of the Hon'ble Apex Court in the case of Union of India & Ors. Vs. J. Ahmed [1979 (2) SCC 286]. He has denied that he was ever called for OR for personal hearing to decide the SCN. He has prayed for quashing and setting aside the SCN dated 27.10.2016, order of punishment of censure dated 10.03.2017 and order of appellate authority dated 01.11.2017.

3. The claims of the applicant have been denied by the respondents. They have stated that the reply given by the applicant to the SCN was found unsatisfactory and he was called for OR for personal hearing on various dates i.e. 26.12.2016, 09.01.2017 and 06.02.2017 but he did not appear. He also did not intimate any reason for non-appearance. The office orders issued in this connection have been filed by the respondents. They have gone on to say that the applicant did not deploy sufficient staff at the above picket despite directions issued in this regard. Hence, due to non-availability of staff, the checking of vehicles could not be done.

4. The respondents have also contended that the applicant deliberately and intentionally delayed in receiving the punishment order dated 10.03.2017 though the same was received in PS Bhajanpura on 08.04.2017 vide Diary No.2494, but the applicant received it on 19.06.2017. Therefore, his appeal was time barred. As per Rule 24 (3) of Delhi Police (Punishment and Appeal) Rules, 1980, the appeal should have been filed within 30 days from the date of receipt of the original order. There is a further clause that the Appellate Authority may accept the appeal, which is barred by limitation, if in his opinion the delay occurred due to circumstances beyond the control of the applicant. But if there are reasons to believe that an officer is evading receipt of an order, the period of one month shall be counted from the date of dispatch of the order. They have also pointed out that the applicant has been awarded 16 minor penalties of censure. They have also found the pleas of the applicant bereft of merit and with no substance.

5. Heard Sh. Sachin Chauhan, learned counsel for the applicant and Mrs. Harvinder Oberoi, learned counsel for the respondents.

6. The first issue to be dealt with is regarding whether adequate opportunity was afforded to the applicant during the proceedings. Though the applicant claimed that he was never called for OR but the respondents have stated that notices, (copies of which have been filed by the respondents with the OA), were sent to the applicant to appear in OR for personal hearing on 26.12.2016, 09.01.2017 and 06.02.2017 respectively, but he did not choose to appear. In light of this, the contention of the applicant cannot be accepted that he was not afforded adequate opportunity. It is seen that his explanation was called for and he was also given several opportunities for oral hearing, which he did not avail. It is further seen that in the impugned order of punishment of censure the competent authority has considered the reply given by the applicant to the show cause

notice.

7. On the issue of delay in filing the appeal, it is found that when punishment order dated 10.03.2017 was received in PS Bhajanpura on 08.04.2017 vide diary No.2494, which was under the control of the applicant. Therefore, it can be held that the applicant had the knowledge of the punishment order dated 10.03.2017. Rule 24(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 dealing with limitation in filing of the appeal reads as under:-

"24. Rules regarding appeal. - (3) An appeal which is not filed within 30 days of the date of receipt of the original order, exclusive of the time to obtain the copy of the record, shall all barred by limitation. The appellant authority may, however, accept an appeal which is barred by limitation, if in his opinion the delay occurred due to circumstances beyond the control of the appellant. If there are reasons to believe that an officer is avoiding receipt of an order, the period of one month shall be counted from the date of despatch of the order by the registered post acknowledgment due."

Despite this, the Appellate Authority considered the appeal of the applicant on merits. Therefore, it can be said that the applicant was given adequate opportunity at every stage.

8. The second argument advanced on behalf of the applicant is that no misconduct is made out against the applicant. In support of his arguments, learned counsel for the applicant has relied upon the decision of the Tribunal in G.P. Sewalia's case (supra) wherein the following observations have been made:-

"8. Having given our anxious thoughts, we have come to a firm conclusion that there is distinction between misconduct and not performing the duties as efficiently as another person similarly situate may be able to perform. Misconduct has to have some element of delinquency, may be, even gross negligence. It is only when the allegations subject matter of charge may tantamount to misconduct that a person can be proceeded for inflicting any of the punishments prescribed in the rules. Non-performance of duties, which may have no element of unlawful behaviour, willful in character, improper or wrong behaviour, 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. If decisions that may ultimately prove to be less beneficial to an organisation for which a person is working are to be termed as misconduct liable for punishment under rules, no person discharging his duties would be able to take any major decision. The administrative work, if may not come to a grinding halt, would, in any case, slow down so much that it may cause more harm and loss to the concerned institution. From our experience from several hundred cases that we have dealt, we find that a negative and indecisive attitude is developing amongst the government officers, primarily for the reason that any decision taken which may be even in good faith, or favourably interpreting rules benefiting even a deserving government employee, may not become subject

matter of disciplinary action against them. Surely, if government servants are to be tried departmentally for bona fide actions taken by them in discharge of their official duties, which may have absolutely no undertones or overtones of delinquency, the situation as prevails today is bound to aggravate.

He has also cited the decision in the case of J. Ahmed (supra) wherein the Hon'ble Apex Court observed as under:-

"In the instant case all the charges framed against the respondent show is that he was not a very efficient officer. They did not specify any act or omission in derogation of or contrary to Conduct Rules, except the general rule (r.3) prescribing devotion to duty. 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. They may be relevant while considering an officer's promotion to higher post or for his retention in a higher post but they cannot be elevated to the level of acts of omission or commission contemplated by Discipline & Appeal Rules for imposing punishment. When the respondent was sought to be removed from service as a disciplinary measure by way of penalty, a clear case of misconduct should have been established."

However, the circumstances of these two cases need to be seen in light of the fact that there is no specific definition of misconduct. Therefore, misconduct in different organizations and situations would be with reference to their mandate, their functioning style and the various instructions in force in a particular organization.

9. The decision in G.P. Sewalia's case (supra) pertains to an official of Delhi Scheduled Castes Financial and Development Corporation Limited using his discretion to invest funds in a certain bank at a certain rate of interest. This decision was questioned and this Tribunal found no element of delinquency, which they held was necessary in the said case. The Tribunal made a distinction between misconduct by an individual and performance of duties which may not be done as efficiently by him as another person similarly situated may be able to do.

10. The case of J. Ahmed (supra) was that of a civil servant who was near retirement but due to disciplinary proceedings being held to establish that the respondent was not fit to hold a responsible position, he was retained beyond the date of his normal retirement. Hon'ble Apex Court felt that since the charged officer was near retirement and the substance of allegations was that he was not a very efficient officer and lacked qualities of leadership and was deficient in the faculty of decision making, that these deficiencies would not by themselves constitute misconduct. However, the Hon'ble Apex Court also held that if the charged officer was a young man and was to continue in the post for a long period, such an inquiry may be made whether he should be retained in a responsible post. In considering this matter, the Hon'ble Apex Court observed as

under:-

"...But rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct.

The Hon'ble Apex Court further observed as under:-

"It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster*(1)]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers) (2)*]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*, and *Satubha K. Vaghela v. Moosa Raza*. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik*, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India*, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P. H. Kalyani v. Air France, Calcutta*, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to

believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabin man signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

11. The Hon'ble Apex Court observed that even though the code of conduct is not exhaustive, the inhibitions in the Conduct Rules clearly provide that an act or omission may as well constitute misconduct. Further the Hon'ble Apex Court has drawn distinction between a single act of omission or error of judgment or lack of efficiency or attainment of highest standards in discharge of duties attached to public events which would ipso facto not constitute misconduct.

12. It has to be borne in mind that the applicant in the present OA is a member of Delhi Police which is a uniformed and disciplined force. Standards for compliance with rules and superior orders have necessarily to be of a higher order. Hon'ble Apex Court in State of Uttar Pradesh vs. Ashok Kumar Singh [1996 Vol.1 SCC 302] has made observations that in a disciplined force strict adherence of rules and procedure is demanded more than any other department.

13. The present case is not one of inefficiency but of non-compliance with the directions regarding deployment. The applicant has himself in his appeal dated 01.07.2017 stated that the deployment officer has been pulled up and has been strictly directed to deploy at least two police personnel at each picket. This is an admission of the fact that he had not followed the directions when he did not deploy at least two police personnel at the picket under PS Bhajanpura. His admission that he has directed the deployment officer to deploy at least two police personnel in the picket shows that he had the wherewithal to post two police personnel at the said picket. It is further to be kept in mind that though he has claimed acute shortage of staff but has not mentioned as to what was the

sanctioned strength against which 52 male constables were posted in the PS. This disobedience of instructions/directions is distinct from inefficiency.

14. I have gone through the rejoinder filed by the applicant wherein he has filed certain orders regarding different employees of Delhi Police wherein show cause notices for censure were given but subsequently their replies were found satisfactory and they were either warned in writing to remain careful in future or show cause notices were filed. All these orders arise from some other cases. The applicant has not claimed that any other matter was dropped out of the matters arising from the same inspection after which a show cause notice was given to him along with others. Even in these cases, it would have to be considered whether the circumstances of shortcomings were similar to those of the applicant.

15. From the above, it emerges that due procedure has been followed by the respondents and a case of misconduct is made out against the applicant. In such circumstances, I do not find any need to interfere with the impugned orders and the OA is, therefore, dismissed being devoid of merits. There shall be no order as to costs.