

(2018) 12 CAT CK 0131
In the Central Administrative Tribunal
Case No : Original Application No. 3506 Of 2013

Kishor Kumar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0131

Hon'ble Judges : K.N. Shrivastava, J;S.N. Terdal, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Vijay Pandita

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. M.K.Bhardwaj, counsel for applicant and Mr. Vijay Pandita, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "(i) To quash and set aside the impugned order dated 08.11.2012 & 27.05.2013.
- (ii) To declare the disciplinary proceedings initiated against the applicant vide show cause notice dated 03.10.2012 as illegal and unjustified.
- (iii) To allow the OA with cost.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

3. The relevant facts of the case are that a Show Cause Notice (SCN) was issued to the applicant for the lapse on his part found during the surprised check made during the night intervening 27/28.09.2012 for not being present in the Police Station. The SCN is extracted below:

"During night intervening 27/28.09.12 a surprise check was made by command room PCR about the availability/presence of SHOs in the police station as per the direction of the worthy CP, Delhi. But you Inspr. Kishore Kumar D-3249 (SHO/ Tilak Nagar) was not found present in the police station. This is a serious act of indiscipline, insubordination and violation of the directions of senior officers.

The above act on the part of Inspr. Kishore Kumar D-3249 amounts to grave misconduct, negligence and dereliction in the discharge of his official duty.

He is, therefore, called upon to show cause as to why his conduct should not be censured for the above said lapse. His written reply, if any, should reach this office within 15 days from the date of its receipt, failing which it will be presumed that he has nothing to say in his defence and ex-parte decision will be taken on merits."

The applicant submitted his reply to the SCN stating that during that time as he was entitled to and as such he had proceeded to his residence for weekly rest after making the relevant DD entry. The relevant portion of the reply is extracted below:

"In this regard it is submitted that during the intervening night of 27/28-9-2012 I had proceeded to my residence for weekly rest vide DD No. 3 dated 28.9.2012 at 12.30 AM. I assure your good self I shall be extra caution in future. There is no lapse on the part of the undersigned in this regard. It is, therefore, requested that the, show cause notice may be filed please."

The competent authority after considering his written reply noted that the said DD entry was made without seeking permission of the competent authority and he remained absent in violation of the direction of the Commissioner of Police and that it was made on his own without informing any of his superior, namely, either ACP or the Dy. Commissioner of Police concerned and that it amounted to insubordination. Giving the above stated reasons the competent authority vide order dated 8.11.2012 "Censured" the applicant. The relevant portion of the impugned order is extracted below:

"I have perused his written reply. He made his departure entry at 0030 Hrs vide DD No. 3-B dated 28.09.12 without seeking permission from competent authority. He violated the direction of worthy CP, Delhi and left the police station at his own without informing his supervisory ACP/Sub Division as well as the undersigned. At the rank of Inspr. This attitude shows his high sense of insubordination, which have no regard of directions/orders senior officers. If he, being incharge of police station does not regard the directions/orders of senior officers then how he can expect from his insubordination. In view of above, I have no alternative but to confirm the notice. Hence the conduct of Inspr. Kishore Kumar No. D-3240 (PIS No. 16910037) is hereby censured."

The appeal filed by the applicant was considered by the appellate authority and he was personally heard in orderly room and the appeal was rejected.

4. The counsel for the applicant vehemently submitted that the said conduct which led to issuance of SCN is not a misconduct and he was entitled to weekly rest, and as such it cannot be taken as misconduct in view of the law laid down by the Hon'ble Supreme Court in the case of Inspector Prem Chand Vs. Govt. of Delhi and Others, reported in JT 2007 (5) SC 294). In the said judgment in para 13 it is clearly held by the Hon'ble Supreme Court that whether the particular conduct is misconduct or not depends upon the facts and circumstances of each case. No hard and fast rule can be laid down therefor. The relevant portion of the judgment are extracted below:

"12 xxx xxx

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

13. The Tribunal opined that the acts of omission on the part of the appellant was not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the appellate authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29.8.2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard and fast rule can be laid down therefor."

From the perusal of the order passed by the competent authority dated 8.11.2012 it is clear that the said conduct is a misconduct and it is crystal clear that the said order is a speaking and reasoned order. And the order passed by the appellate authority is also well considered order. In the circumstances, there is no reason to interfere with the impugned orders.

5. Accordingly, OA is dismissed. No order as to costs.