

(2019) 07 CAT CK 0070

In the Central Administrative Tribunal

Case No : Original Application No. 1336 Of 2015

Shishu Pal

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

All India Services (Discipline And Appeal) Rules, 1969 — Rule 4
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 CAT CK 0070

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Sachin Chauhan, Harvnder Oberoi

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicant sought the following reliefs:-

"I. To quash and set aside the show cause notice No.3377/HAP-OD dated 09.04.2009, order of punishment of censure No.11471-99/HAP-OD dated 16.11.2009 and order of appellate authority No.989-94 P.Sec.N.R.(III) dated 25.03.2014 with all consequential benefits including seniority and promotion benefits including seniority and promotion and pay and allowances.

Or/and

II. Any other relief which this Hon?ble court deems fit and proper may also be awarded to the applicant."

2. The relevant facts of the case are that applicant while working as Head Constable (Min.) in Delhi Police was issued a Show Cause Notice for censure dated 09.04.2009 on the following allegation :-

"It is alleged against you ASI (Exe.) Mahender Singh No.2821/D, Head Constable (Min.) Shishu Pal No.5/O.D. and HC (Exe.) Darvesh No.148/OD that while looking after the complaints concerning Alipur Sub-Division in complaint branch/Outer

District, an enquiry report into the complaint of Shri Rakesh Rakesh S/o Shri Ranbir Singh R/o Village Barahi PS Bahadurgarh District Jhajjar (Haryana) duly forwarded by ACP/PG Cell on 30.10.08 in which disciplinary action against ASI Nathu Ram was recommended. But the same was put up before the undersigned on 13.3.09 i.e. after about four and a half month which is a serious lapse on all of you part.

The above act on the part of ASI (Exe.) Mahender Singh No.2821/D, Head Constable (Min.) Shishu Pal No.5/O.D. and HC (Exe.) Darvesh No.148/OD amounts to gross negligence, carelessness, irresponsible and dereliction in the discharge of their official duties.

They are, therefore, called upon to show cause as to why their conduct should not be CENSURE. Their reply, in this regard should reach the undersigned within 15 days from the date of its receipt, failing which it will be presumed that they have nothing to say in their defence and the notice will be decided on its merit."

3. The applicant, one of the co-defaulters, has also submitted his reply to the said Show Cause Notice.

4. After considering the replies submitted by the applicant as well as other co-delinquents to the said Show Cause Notice, the disciplinary authority imposed a penalty of ?Censure? upon the applicant vide order dated 16.11.2009 (Annexure A-2). The contents of the said order are reproduced below:-

"A show cause notice provisionally proposing therein the punishment of Censure was issued to ASI (Exe.) Mahender Singh Malik No.2821/D (PIS No.28862299), Head Constable (Min.) Shishu Pal No.5/OD (PIS No.27970034) and HC (Exe.) Durvesh No. 148/OD (PIS No.28862299) vide this office No.3377/HAP/O.D. dated 9.4.2009 under the provisions of Delhi Police (Punishment & Appeal) Rules-1980 on the allegations that while looking after the complaints concerning Alipur Sub-Division in Complaint Branch/Outer District, an enquiry report into the complaint of Shri Rakesh S/o Shri Ranbir Singh R/o Village Barahi PS Bahadurgarh District Jhajjar (Haryana) duly forwarded by ACP/PG Cell on 30.10.08 in which disciplinary action against ASI Nathu Ram was recommended. But the same was put up before the undersigned on 13.3.2009 i.e. after about four and a half months which was a serious lapse on their part.

They received the copy of show cause notice and submitted their replies accordingly. In his reply ASI Mahender Singh No.2821/D has stated that being Executive cadre he was assigned with the complaint making job only. Further he has stated that he has no knowledge of typing and computer also. All the work pertaining to drafting and sending the reply to the complaint was entrusted to Head Constable (Min.) Shishu Pal No.5/OD.

In his reply Head Constable (Min.) Shishu Pal No.5/OD has stated that on receipt of reply from PG Cell/OD the file was put up before the then HAC/OD, Insp. (Min.) Siri Ram but he did not clear the said complaint from worthy DCP/OD

despite he kept on reminding him many time.

In his reply Head Constable (Exe.) Durvesh No.148/OD has stated that he was assigned with the duty of maintenance of record of Sub-Division Alipur. All the timed complaints used to be given to Head Constable (Min.) Shishu Pal No.5/OD for drafting and sending reply to the complaints.

After carefully gone through the relevant record and written submissions putforth by all the delinquents as well as verbal submissions during O.R., the undersigned is of the considered view that :-

1. ASI Mahender Singh No.2821/D has confirmed the fault of Head Constable (Min.) Shishu Pal No.5/OD. However, the ASI should have been more dutiful in keeping a check on the fault of Head Constable (Min.) Shishu Pal No.5/OD. As such there is a lapse being senior on his part. For this ASI (Exe.) Mahender Singh No.2821/D is warned in writing for the poor control over the negligent act of HC Shishu Pal No.5/OD and to remain more careful and not to repeat such error in future.

2. ASI (Exe.) Mahender Singh No.2821/D and Head Constable (Exe.) Darvesh No.148/OD have clearly denied the knowledge of file movement being done by the Head Constable (Min.) Shishu Pal No. 5/OD. Moreover, the delinquent HC (Min.) has neither put up any record of dispatch register to support his version instead he had put up blame on other officers. The statement of other staff of the branch and the comments of the then HAC/OD has confirmed the laxity on his part.

Hence, the proposed Show Cause Notice issued to him is confirmed and the conduct of Head Constable (Min.) Shishu Pal No.5/OD is hereby Censured.

3. It sees that Head Constable (Exe.) Durvesh No.148/OD is not a party to the inordinate delay caused by HC (Min.) Shishu Pal, No.5/OD as well as his negligent act. As the HC was just maintenance of assigned the duty of record. Therefore, Show Cause Notice issued to Head Constable (Exe.) Durvesh No.148/DO is hereby filed.

Let a copy of this order be given to Head Constable (Min.) Shishu Pal No.5/OD free of cost. He can file an appeal against this order to the Joint C.O./Northern Range, Delhi within 30 days from the date of its receipt by enclosing a copy of this order, if he so desires."

The Applicant preferred an appeal on 25.7.2012. The appellate authority after considering his appeal rejected the same vide order dated 25.3.2014. The relevant portion of the appellate authority is extracted below:

"The appellant has received the punishment order appealed against on 25.11.2009. He was supposed to file appeal against this order within 30 days of its receipt. But he has filed the appeal against this punishment on 25.07.2012 i.e. after a period of about 2 ½ years.

In view of the above, I have gone through the pleas taken by the appellant in his appeal and record available in the file. He could not give any cogent reason about delay in filing the appeal which is grossly time barred for two years and 8 months.

However, for the sake of natural justice, an opportunity was given to the appellant for personal hearing on 19.02.2014 to adduce anything new in his defence. During personal hearing the plea taken by the appellant was not conceivable as he only repeated the same which had already been written in his appeal. When he was asked specifically about it, he could not give any reasonable cause for inordinate delay of complaint, he kept mum and only requested to vacate the order. Therefore, I am of the view that the appellant has failed to do his duties properly and with sincerity and he also could not given any cogent reason about delay in filing the appeal which is grossly time barred for about two years, hence, delay cannot be condoned at this stage and appeal is rejected.

The appellant be informed accordingly."

5. Learned counsel for the applicant vehemently submitted that impugned show cause notice, the impugned penalty order as well as appellate authority's order are illegal, arbitrary, unjustified, unreasonable, and also in violation of principles of natural justice. He further submitted that instant case is a case of no misconduct as the allegation levelled against the applicant in the impugned show cause notice could not have been even alleged against the applicant as it was not the duty of the applicant to put up the file for clearance before DCP/OD in terms of punishment. It was the duty of HAC-Head Assistant of Complaint Branch i.e. Inspr. Shri Ram (D-81-No.28790283) and the present averment is further consolidated by the noting of the file which clearly establishes that the recommendation of ACP-PG (Public Grievance) Cell for Disciplinary action was marked to HAC (Head Assistant for Complaint Branch) and if any delay of putting up the file before the DCP/OD (Outer District then it has to be attributable on the part of HAC (Head Assistant of Complaint Branch) and not the applicant.

5.1 Counsel further contended that applicant has been subjected to hostile discrimination as the co-defaulters of the alleged allegations were similarly situated like the applicant but still the applicant was awarded the punishment of censure and other two co-delinquents were let off without given any punishment.

5.2 Counsel also contended that as per Delhi Police Office Procedure Rules, the HACs-Head Assistant of concerned Branches of all District/Unit clear the dak from the competent authority at their ends. In this regard, applicant placed reliance on Standing Order dated 1.1.2001.

5.3 Counsel also contended that the applicant could not make his appeal against the said punishment order in time as he being into personal and official problems as he was subjected to 3 major departmental proceedings and 10 minor departmental proceedings.

5.4 Counsel also submitted that present is a case of no misconduct on the part of the applicant and this Tribunal in OA No.220/2006 vide Order dated 27.8.2008 held that "Non-performance of duties, which may have no element of unlawful behavior, 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." Applicant also placed reliance of the decision of the Apex Court in the case of Union of India and others vs. J. Ahmed, (1979) 2 SCC 286, in which it has been held that deficiencies in personal ability would not constitute misconduct for taking disciplinary proceeding. It was further held that negligence in performance of duty or inefficiency in discharge of duty are not acts of ?commission or omission? under Rule 4 of the Discipline and Appeal Rules.

6. On the other hand, counsel for the respondents by referring to the counter affidavit submitted that original cause of action accrued to the applicant on 16.11.2009 on which day the punishment of censure was imposed upon him for dereliction in performance of his duties and the applicant received the punishment order on 19.11.2009 and he was required to file his appeal if any against the said order within 30 days from the date of receipt of punishment order but he has not filed his appeal within the prescribed time, as he filed his appeal for the first time after an inordinate delay of more than 2 years and 4 months on 25.7.2002 and just because the respondents vide its order dated 25.3.2014 rejected the same in no manner would give the applicant a fresh cause of action to agitate an issue of the year 2009. It seems the applicant by not challenging said order deemed to have accepted the decision of the respondents as correct, as till 25. 7.2002 there was no communication from the side of the applicant. As such just because the respondent vide order dated 25.3.2014 rejected the appeal of the applicant, the same can in no manner be construed as giving the applicant a fresh cause of action to claim relief pertaining to the year 2009. As such the instant OA is liable to be dismissed on the short ground of delay and laches. In support of this contention, reliance is placed on the decision of the Hon?ble Supreme Court in the cases of C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 and Union of India vs. M.K. Sarkar, (2010) 2 SCC 59.

6.1 Counsel further contended that there has been no violation of any of the principles of natural justice. He specifically submitted that the applicant had no documentary support or file movement/dispatch number etc. to support his contention and even the statement of other staff of the Branch and the comments of the then HAC/OD also confirmed the laxity on the part of the applicant. He further submitted that Inspector (Min.) Siri Ram, the then HAC/OD clearly pointed out that the applicant had not put up the concerned file to him for getting it cleared and he is shirking his responsibility by putting blame on others. The contention of the applicant that it was the Head Asstt., who did not get the file cleared is incorrect but the truth of the matter is that the file never reached the Head Asstt. on time for it to be cleared on time. He also submitted that cases cited by the applicant are of no relevance in the instant case, as according to the

respondents, in the case of J. Ahmed (supra), the Apex Court ruled that the disciplinary proceedings for removal of service cannot be initiated for lack of leadership, inaptitude, lack of foresight, lack of firmness and indecisiveness which are deficiencies in the personal character and ability of a Government servant, which is not the factual position of the present case.

7. After having heard learned counsel for the parties and perused the pleadings on record, it is observed that the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon^{ble} Supreme Court has laid down the law in several cases, some of which have been enumerated below:

In the case of K.L.Shinde Vs. State of Mysore (1976) 3 SCC 76, the Hon^{ble} Supreme Court in para 9 observed as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross - examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada - bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and

circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of B.C.Chaturvedi Vs. UOI & Others (AIR 1996 SC 484) at para 12 and 13, the Hon^{ble} Supreme Court observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each

case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Further, in the case of *Union of India and Others Vs. P.Gunasekaran* (2015 (2) SCC 610), the Hon'ble Supreme Court has observed as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence."

8. So far as aforesaid contentions of the applicant are concerned, it is observed that there is no violation of principles of natural justice and contents of the reply

as well as appeal submitted by the applicant have been duly considered by the respondents before passing the aforesaid impugned orders. So far as contention of the applicant that rejection of applicant's appeal on the ground of delay by the appellate authority is a wrong decision since the appellate authority had rejected his appeal of 25.7.2012 vide order dated 25.3.2014 despite the fact that personal hearing was also afforded to the applicant on 19.2.2014 is concerned, we have already quoted the operative part of the order passed by the appellate authority in which the appellate authority specifically recorded that during personal hearing the plea taken by the appellant was not allowed as he only repeated the same which had already been written in his appeal and when he was asked specifically about it, he could not give any reasonable cause for inordinate delay of complaint, he kept mum and only requested the respondents to vacate the order. Since the appellate authority clearly recorded that the applicant has failed to do his duties properly and with sincerity and he also could not given any cogent reason about delay in filing the appeal which is grossly time barred and filed after expiry of about two years, hence, delay cannot be condoned at this stage and appeal is rejected. As such it cannot be said that the appeal of the applicant was rejected by the appellate authority merely on the ground of delay but the fact is that the same was rejected on the ground of merit as well as delay as the appellate authority after having regard to the contents of his appeal and after affording him a personal hearing did not find any the grounds adduced in the appeal acceptable on merit as well as delay.

9. It is further observed that there is no dispute that while looking after the complaints concerning Alipur Sub-Division in complaint branch/Outer District, an enquiry report into the complaint of Shri Rakesh S/o Shri Ranbir Singh R/o Village Barahi PS Bahadurgarh District Jhajjar (Haryana) duly forwarded by ACP/PG Cell on 30.10.08 in which disciplinary action against ASI Nathu Ram was recommended but the same was put up before the competent authority on 13.3.09 i.e. after about four and a half month, which is a serious lapse on all the concerned employees. Accordingly, show cause notices were issued to all the concerned employees in the said matter and after receipt of the replies of all the concerned employees including the applicant, the disciplinary authority passed a detailed order in which it has specifically recorded as under:-

"They received the copy of show cause notice and submitted their replies accordingly. In his reply ASI Mahender Singh No.2821/D has stated that being Executive cadre he was assigned with the complaint making job only. Further he has stated that he has no knowledge of typing and computer also. All the work pertaining to drafting and sending the reply to the complaint was entrusted to Head Constable (Min.) Shishu Pal No.5/OD.

In his reply Head Constable (Min.) Shishu Pal No.5/OD has stated that on receipt of reply from PG Cell/OD the file was put up before the then HAC/OD, Insp. (Min.) Siri Ram but he did not clear the said complaint from worthy DCP/OD despite he kept on reminding him many time.

In his reply Head Constable (Exe.) Durvesh No.148/OD has stated that he was assigned with the duty of maintenance of record of Sub-Division Alipur. All the timed complaints used to be given to Head Constable (Min.) Shishu Pal No.5/OD for drafting and sending reply to the complaints."

After carefully going through the relevant record and written submissions of all the delinquents as well as verbal submissions during O.R., the Disciplinary Authority recorded as under:-

"1. ASI Mahender Singh No.2821/D has confirmed the fault of Head Constable (Min.) Shishu Pal No.5/OD. However, the ASI should have been more dutiful in keeping a check on the fault of Head Constable (Min.) Shishu Pal No.5/OD. As such there is a lapse being senior on his part. For this ASI (Exe.) Mahender Singh No.2821/D is warned in writing for the poor control over the negligent act of HC Shishu Pal No.5/OD and to remain more careful and not to repeat such error in future.

2. ASI (Exe.) Mahender Singh No.2821/D and Head Constable (Exe.) Darvesh No.148/OD have clearly denied the knowledge of file movement being done by the Head Constable (Min.) Shishu Pal No. 5/OD. Moreover, the delinquent HC (Min.) has neither put up any record of dispatch register to support his version instead he had put up blame on other officers. The statement of other staff of the branch and the comments of the then HAC/OD has confirmed the laxity on his part.

Hence, the proposed Show Cause Notice issued to him is confirmed and the conduct of Head Constable (Min.) Shishu Pal No.5/OD is hereby Censured.

3. It sees that Head Constable (Exe.) Durvesh No.148/OD is not a party to the inordinate delay caused by HC (Min.) Shishu Pal, No.5/OD as well as his negligent act. As the HC was just maintenance of assigned the duty of record. Therefore, Show Cause Notice issued to Head Constable (Exe.) Durvesh No.148/DO is hereby filed."

It is also seen that in the reply to the show cause notice as well as in the appeal, the applicant only raised the contention that the complaint file alongwith enquiry report of ACP/PG was put-up before the then HAC-OD, Insp. (Min.) Shri Ram for orders on the same but he did not get clear orders from the DCP/OD and further contended that he reminded the HAC-OD Insp. (Min.) so many times to clear the same. But the said contention was rightly rejected by the disciplinary authority as the applicant has not produced any record of dispatch register to support his aforesaid contention and they have also recorded that the applicant had simply sought to shift the blame on other officers. The disciplinary authority had after taking into account the replies of all the concerned employees to the common chargesheet given his findings as quoted above. As such this Tribunal does not find any illegality in the order passed by the disciplinary authority awarding the punishment of censure upon the applicant. However, so far as contention of the applicant as mentioned in paras 5 and 6 of his appeal is concerned, the appellate

authority in its order specifically dealt with the same in his order and observed that applicant and other two co-delinquents were looking after the complaints concerning Alipur Sub-Division in Complaint Branch/Outer District, as such admittedly the applicant, who was discharging the work pertaining to drafting and sending the reply to the complaints, has failed to prove by any documentary evidence that on receipt of reply from PG Cell/OD, the file was put up before the then HAC/OD. As such the appellate authority has rightly rejected the appeal of the applicant on merit as well as delay as admittedly the appeal was preferred by the applicant after expiry of more than two years whereas the time for preferring of such appeal as mentioned by the disciplinary authority in its punishment order was 30 days. Further in his appeal as well as during personal hearing, the applicant did not give reference to any entry in the dispatch register to support his version that there was no delay on his part. Nor did he advance any verifiable reason for the delay in filing the appeal before the respondents, which was grossly time barred. As such, this Tribunal also observed that the mere allowing of the applicant's condonation of delay application while filing the OA does not mean that the stale matter as per the rule position will be decided other than on merit.

10. So far as the contention of hostile discrimination is concerned, it is observed that the disciplinary authority quite clearly after having regard to the replies of the co-delinquents and adjudging the aspect of responsibilities of the co-delinquents rightly awarded the punishment of censure upon the applicant only as the applicant was not able to prove through records, entries in the dispatch register that the file was put up by him before the then HAC/OD. As such the said act of the applicant cannot be said to be a case of no misconduct. The judgments relied upon by the applicant are apparently on the basis of the facts distinguishable and as such not relevant to the present factual position.

11. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against him is concerned, it is well settled proposition of law, as held by the Hon^{ble} Apex Court in catena of cases, that it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment. In *Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabha M. Lad*, reported in 2010 (3) ALSJ SC 28, it has been held by Hon^{ble} Supreme Court as under:-

"The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

We do not find anything shocking in the order passed by the disciplinary

authority as well as appellate authority. Rather the orders are clear and comprehensive and have stated the full reasons for not accepting the contentions of the applicant and for coming to the conclusion that this applicant deserves to be censured for his conduct. Hence, in view of the facts of the case and law laid down by the Hon^{ble} Supreme Court (*supra*) on the subject of disciplinary proceedings and for the reasons stated hereinabove, this Tribunal does not find any merit in this case and the same is accordingly dismissed. No order as to costs.