

(2018) 09 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 1465 Of 2013

Somender Pal Tyagi

APPELLANT

Vs

Commissioner Of Police Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 09 CAT CK 0012

Hon'ble Judges : K.N. Shrivastava, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Sumedha Sharma

Final Decision : Dismissed

Judgement

K.N. Shrivastava, Member (A)

1. The applicant joined Delhi Police as Sub Inspector on 22.10.1982 and secured his promotion as Inspector in the year 1994. The applicant, at the relevant point of time was posted as SHO at Shakar Pur Police Station when Annexure A-3 Show Cause Notice (SCN) dated 17.03.2007 came to be issued to him by the Disciplinary Authority (DA), which reads as under:-

"During the inspection of Police Station Shakar Pur on 27.2.2007 conducted by ACP/Preet Vihar, the following discrepancies have been noticed which shows that Insp. Somendar Pal Tyagi, No.D-1/813, being SHO/Shakar Pur totally failed to supervise the Police Station functioning:-

i) MLC Register - The date of receipt of MLC was not properly written. The compliance of previous inspection was not done.

(ii) Missing Person Register - Out of four missing persons who were not traced so far, one was a young boy around 17 years of age.

(iii) PCR Call Register - Many calls were pending for days together. No weekly abstract was made as per the direction of the earlier inspection.

(iv) Register No.9, Part-II - The analysis of the Part-II revealed that beat No. 5 & 10 are extremely affected by auto theft. Beat No. 4,6, 7 & 8 are also affected. Beat No. 2,3,9 & 11 are marginally affected. Beat No.6, 10 and 11 are very much affected by house theft and beat No. 2 and 8 marginally affected. Beat No. 9 is affected by bag lifting in alarming proportion.

Thus, the above act on the part of Inspr. Somender Pal Tyagi, No.D-1/813, SHO/ Shakar Pur amounts to gross negligence, carelessness, professional incompetence and dereliction in the discharge of his official duties for non compliance of instructions of senior officers which renders him liable for disciplinary action. Adequate steps have not been taken to prevent crime.

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

2. The applicant replied to the SCN vide his letter dated 28.06.2007.

3. The DA, namely Joint Commissioner of Police, New Delhi Range, not satisfied with the explanation of the applicant, vide Annexure A-4 order dated 15.11.2007 imposed the penalty of 'Censure' on the applicant. His appeal against the order of DA was also dismissed by the Appellate Authority (AA), namely, Commissioner of Police, Delhi, vide Annexure A-5 order dated 11.06.2008.

4. Aggrieved by the Annexures A-4 and A-5 orders passed by the DA and AA, the applicant approached the Tribunal in OA No.1709/2009, seeking their quashment and setting aside. The ibid OA was allowed by the Tribunal and the Annexures A-4 and A-5 orders were quashed and set aside on the ground that the points raised by the applicant in his representation have not been dealt with by the authorities concerned in their respective orders. Liberty also was given by the Tribunal to the respondents to take the SCN to its logical end. The operative part of the Tribunal's order is reproduced below:

"6. For the reasons mentioned hereinbefore, we allow this Original Application and quash the impugned orders. Disciplinary authority would, however, be at liberty to take the show cause notice to its logical ends if the respondents may so desire but surely, the orders shall be passed after taking into consideration the defence projected by the applicant and giving reasons, if the same may not be acceptable."

5. In compliance of the direction of the Tribunal, the DA has passed impugned Annexure A-1 order dated 19.05.2010 which is a reasoned and speaking order. The DA has imposed the penalty of censure on the applicant by this order. The DA's order has been re-affirmed by the AA in terms of dismissing the appeal of the applicant against it vide its impugned Annexure A-2 order dated 30.09.2011. The AA order is also a reasoned and speaking order dealing with all the points

raised by the applicant.

6. Through the medium of this OA, the applicant has impugned the SCN dated 17.03.2007 as well as the Annexures A-1 and A-2 orders of DA and AA respectively and has sought their quashment and setting aside.

7. In support of the reliefs claimed, the applicant has raised all those issues that he had raised in his Annexure A-7 representation dated 28.6.2007.

8. Pursuant to the notices issued, the respondents entered appearance and filed their reply to which a rejoinder has been filed on behalf of the applicant.

9. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 29.08.2018. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicant and that of Mrs. Sumedha Sharma, learned counsel for the respondents were heard.

10. The main thrust of the argument of Shri Bhardwaj was that the applicant has replied to all the charges with facts and figures but the respondents have ignored it. Besides stressing on the averments made by the applicant in the OA and the ground pleaded, Shri Bhardwaj also placed reliance on the following judgments:

i) Union of India & Ors. v. J. Ahmed, [(1979) 2 SCC 286], wherein the Hon'ble Apex Court has held as under:

".....It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character of personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

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

ii) Tribunal's order in OA No.2396/2012 - Ved Bhushan v. Govt. of NCTD & Ors., dated 18.02.2013, wherein the Tribunal has held as follows:

".....Therefore, any deficiency in performance of duty at best could reflect in assessment of his performance in his annual confidential report. Nonetheless, this may not be sufficient to warrant the award of penalty in the absence of any necessary elements of delinquency in his conduct."

11. Mrs. Sumedha Sharma, learned counsel for the respondents, on the other hand, argued that the applicant in his Annexure A-7 reply dated 28.06.2017 to the Annexure A-3 SCN has himself admitted the charges levied against him in the SCN. She particularly drew our attention to the last para of the applicant's

reply, which is reproduced below:

"It is submitted that I took the charge of police-station on 20.1.07 I "have been engaged for a long time with preparation of replies to be filed in Hon'ble Delhi High Court in connection with appeals filed by accused/convict Babloo Srivastava etc in case FIR No.258/92, P.S. Shakarpur and could not pay desired attention. I, however, assure that it will not occur again. I may also be given an opportunity to appear in person before your honour so that I can explain."

12. We have considered the arguments of the learned counsel for the parties and have perused the pleadings. The scope of judicial review in disciplinary proceedings is highly limited, as laid down by the Hon'ble Apex Court in the case of Union of India v. T. Gunasekran, [(2015) 2 SCC 610]. Defining the scope of judicial intervention in such matters, the Hon'ble Apex Court has laid down the following principles:

"13. 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 considerations;
- 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.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

13. In the instant case, we find that earlier orders of DA and AA (Annexure A-3 and A-4) were quashed and set aside by the Tribunal vide order dated 12.03.2010 in OA No.1709/2009 filed by the applicant solely on the ground that the issue raised by the applicant in his Annexure A-7 reply to the SCN were not dealt with by the DA and AA in their respective orders. Availing the liberty granted by the Tribunal, the DA and AA have now passed impugned Annexures A-1 and A-2 orders imposing again the penalty of Censure on the applicant. We have perused both these orders and we are fully satisfied that these orders are reasoned and speaking ones and have dealt with all the issues raised by the applicant in his Annexure A-7 reply dated 28.06.2007 to the SCN. In view of it and also taking into account the aforementioned judgments of the Hon'ble Apex Court laying the scope of judicial review, we are of the opinion that there is no need to interfere with the Annexures A-1 and A-2 orders. Accordingly, they are upheld. The OA is dismissed, as we do not find any merit in it.

14. There shall be no order as to costs.