
(2018) 09 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 702 Of 2013

Udaibir Singh

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0009

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

Bench : Division Bench

Advocate : Sachin Chauhan, G.D. Chawla, Harvinder Oberoi

Final Decision : Allowed

Judgement

K.N. Shrivastava, Member (A)

1. The applicant joined Delhi Police as Sub Inspector in the year 1989 and secured his promotion as Inspector in the year 2006. The applicant, at the relevant point of time was posted as SHO, Jafrabad, North East District. On 29.03.2011 Annexure A-1 Show Cause Notice (SCN) came to be issued to him by the Disciplinary Authority (DA), namely, Deputy Commissioner of Police, North East District, Delhi, which reads as under:-

"The Hon'ble Court of Sh. Devender Kumar, Commercial Civil Judge/Addl. Rent Controller (NE), Karkardooma Court, Delhi had issued the contempt of Court Notice to the undersigned and SHO/Jafrabad for not complying the Court direction to provide police aid to execute warrant of attachment. The undersigned was directed to appear in person and furnish explanation for non-compliance and contempt of Court proceedings on 18.3.2011 in execution No.26/09 P.S. Jafrabad to the bailiff as and when required. Accordingly, SHO/Jafrabad was directed to provide police aid to the decree holder of the court vide this office letter No.4275/Legal Cell (D-II) NE dated 26.5.2010. During enquiry, it has come to light that on 13.01.2011, the bailiff approached SHO/Jafrabad, Inspr. Udaibir Singh, No.D/2812 for providing police assistance for the execution

of warrant of attachment. On which, SHO/Jafrabad denied the said assistance on the ground that the force was busy in the arrangement of law and order for Masjid dispute. It seems that Insp. Udaibir Singh, No.D/2812, SHO/Jafrabad refused to provide the force to bailiff at his own will and disobeyed the order of Hon'ble Court. He should have been informed to the Senior Officer in this regard, but he was failed to do so, whereas clear directions/instructions have already been issued from PHQ that SHO concerned would not deny to provide the force to the bailiff in such type cases at his own will. It clearly shows that Insp. Udaibir Singh No.D/2812, SHO/Jafrabad was found irresponsible, negligent & careless to perform his official duty assigned to him, which is a serious lapse on his part.

The above act on the part of Insp. Udaibi Singh, No.D/2812, SHO/Jafrabad amounts to grave misconduct, negligence and carelessness in discharge of official duties.

He is, therefore, called upon to show cause as to why his conduct should not be censured for this lapse. His reply, if any should reach this office within 7 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 matter will be decided ex-parte on merit."

2. The applicant submitted his Annexure A-4 reply dated 25.04.2011 to the SCN. Not satisfied with the reply of the applicant the DA vide its impugned Annexure A-2 order dated 07.05.2011 imposed the penalty of 'Censure' on the applicant. His Annexure A- 5 appeal dated 02.06.2011 was also dismissed by the departmental Appellate Authority (AA), namely Joint Commissioner of Police, South Eastern Range by order dated 30.10.2012. Aggrieved by the Annexure A-1 SCN, Annexure A-2 order of the DA and Annexure A-

3 order of the AA, the applicant has approached the Tribunal in the instant OA praying for the following relief:

"(i) To quash and set aside the show cause notice at Annexure A-1, order of punishment of censure at annexure A-2 and order of appellate authority at annexure A-3 with all consequential benefits including seniority and promotion and pay and allowances."

3. In support of the relief claimed, the applicant has broadly pleaded the following grounds:

3.1 The DA relied upon Preliminary Enquiry (PE) conducted by the department in the matter but failed to provide a copy of such report to the applicant along with SCN which in fact is the very basis of the SCN.

3.2 The SCN has been issued with a pre-determined mind. Principles of natural justice have not been followed as the applicant was not provided an opportunity of being heard. Hence the Annexures A-2 and A-3 order of the DA and AA are bad in law.

3.3 The SCN is very vague and indefinite. The allegation does not make it clear as to the act of the applicant that led to violation of any guidelines or instructions of the department. The SCN has been issued by the DA, namely, DCP, North-East District who also is the complainant and has also passed the penalty order. As such he has acted as a judge in his own case.

3.4 The time for execution of the warrant was prescribed as six months by the Court but the bailiff approached the police station just one day before the lapse of six months period. Due to law and order situation then prevailing, there was shortage of staff in the police station as a result of which the applicant could not provide the police force for execution of the warrant. The applicant has not indulged in any misconduct. Any deficiency in personal character or personal ability would not constitute any misconduct. In this regard, reliance is placed on the judgment of this Hon'ble Tribunal in OA No.220/2006 dated 27.08.2008 - G.P. Sewalia v. Union of India and a judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. v. J. Ahmed, [(1979) 2 SCC 286].

4. Pursuant to the notices issued, the respondents entered appearance and filed reply in which they have averred as under:

4.1 The applicant has committed grave misconduct, negligence, carelessness and dereliction in discharge of his official duties as he failed to execute the warrant issued by the Civil Judge/ Additional Rent Controller (NE), Karkardooma Court, Delhi. As a consequence thereof, the DCP, North East District has to face consequences of Contempt of Court.

4.2 The applicant as SHO, PS Jafrabad failed to provide police aid for execution of the warrant to the bailiff on the plea that due to law and order situation relating to a Masjid dispute, the force was not available. He ought to have sought instructions from his senior officers in the matter. He failed to follow the extant directions/instructions of the Police Headquarters in the matter.

4.3 The DA before passing the penalty order has called the applicant in the orderly room and granted him personal hearing on 5.5.2011.

5. The applicant has filed rejoinder to the reply filed on behalf of the respondents in which more or less he has reiterated the averments made in the OA.

6. With the completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 30.08.2018. Arguments of Shri Sachin Chauhan, learned counsel for the applicant and that of Shri G.D. Chawla, learned counsel for Mrs. Harvinder Oberoi, learned Additional Standing Counsel were heard.

7. Shri Sachin, besides reiterating the pleadings in the OA, stated that hardly 24 hours time was given to the applicant by the bailiff for providing police aid for execution of the warrant. The applicant was handicapped to provide police aid in view of the prevailing law and order situation in his jurisdiction relating to a Masjid dispute.

7.1 The applicant has submitted his oral and written apology in the Court of Civil Judge/Addl. Rent Controller (NE) Karkardooma, Delhi, which has been accepted.

8. Shri Chawla, learned counsel appearing for the respondents adhered to the averments made in the reply filed on behalf of the respondents.

9. We have considered the arguments of the learned counsel for the parties and perused the pleadings.

10. The applicant in his Annexure A-4 reply to the SCN has clearly explained the reasons as to why he could not provide aid to the bailiff for execution of the warrant on 13.01.2011. Although the Court had granted six months' time for execution of the warrant but for the reasons best known to the bailiff, he approached the applicant just on the last date. The applicant's contention that he was handicapped to provide police aid in view of the acute shortage of police force due to prevailing law and order situation on that date. This aspect has not been controverted by the respondents. They have only stated that the applicant ought to have brought this matter to the notice of his seniors for finding a solution. To this extent, we are in agreement with the contention of the respondents. However, the fact remains that the applicant had tendered his oral and written apology in the Civil Court and the same apparently had been accepted. We also find considerable merit in the contention of Shri Sachin Chauhan, learned counsel for the applicant that the report of the PE conducted by the DA prior to the issuance of the SCN and which in fact was the very basis of the SCN, has not been provided to the applicant, which has grievously caused hurt to the applicant's interest.

11. Taking into consideration the fact that the applicant did not have sufficient time for providing police aid for executing the warrant on the date when the bailiff approached police for assistance; there was a law and order situation in the jurisdiction of the police station and the applicant has already tendered his oral and written apology in the Civil Court, we are of the view that the imposition of penalty of 'Censure' on the applicant was a very harsh action on the part of the DA and disproportionate to the alleged failure of the applicant in the discharge of his duties.

12. In the conspectus of the discussions in the pre-paras, we quash and set aside the Annexures A-2 order dated 07.05.2011 and A-3 order dated 30.12.2012 passed by the DA and AA respectively. The OA stands allowed.

13. There shall be no order as to costs.