

## **S.I. Om Prakash vs Commissioner Of Police on 20 October, 2010**

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1123 of 2009

New Delhi this the 20th day of October, 2010

Hon ble Dr. A.K.Mishra, Member (A)  
Hon ble Dr. Dharam Paul Sharma, Member (J)

S.I. Om Prakash  
S/o Sh. Lal Chand,  
R/o P.S.Nangloi,  
Delhi  
.. Applicants  
(By Advocate: Shri Ajesh Luthra)

VERSUS

Commissioner of Police  
PHQ, MSO Building,  
I.P.Estate,  
New Delhi

2. Jt. Commissioner of Police,  
Southern Range,  
PHQ, MSO Building,  
I.P.Estate,  
New Delhi

Deputy Commissioner of Police (West)  
Rajouri Garden,  
New Delhi

.... Respondents

(By Advocate: Ms. Rashmi Chopra)

O R D E R

Dr. Dharam Paul Sharma, Member (J) The applicant, a Sub-Inspector in Delhi Police, has been awarded the penalty of censure vide Order dated 16.7.2007, a copy of which is at Annexure A-2. His appeal thereagainst has also been turned down by the appellate authority vide order dated 11.3.2008, a copy of which is at Annexure A-1.

2. Feeling aggrieved, the applicant has filed the present application challenging the aforesaid two orders as well as the show cause notice dated 2.2.2007 at Annexure A-3 based upon which the said penalty has been imposed upon him.

3. The brief facts of the case are that during the course of his duty, the applicant was entrusted with the investigation of the case of kidnapping vide FIR dated 13.12.2005 under Section 365 IPC P.S.Nangloi. A complaint was received from one Mahendri Devi whereby the Joint Commissioner of Police, Southern Range, directed the scrutiny of the case file. In the scrutiny, certain lapses were noticed on the part of the applicant for which an explanation was called from the applicant vide Explanation Notice dated 4.8.2006, a copy of which is at Annexure A-4. The discrepancies noticed as aforesaid are as follows:-

.There is no copy of Newspapers cutting which could show that the efforts to trace the victims have been made through publishing the particulars in Newspapers. A letter issued from General Branch/West in this regard has been attached with the case file, but IO did not bother to peruse this letter to get the matter published in Newspapers.

The information about incident of kidnapping with the particulars of missing persons has not been conveyed to NCRB for any clue in this regard.

There is no document in the case file suggesting that the records of hospitals/mortuary have been checked to get any clue.

In the 6th case diary dated 27.1.2006, the name of person has been mentioned to whom interrogation was made to get any clue. Otherwise in five case diaries, the I.O. has not mentioned any person to whom he had contacted for getting any clue about the kidnapped person.

There is no case diary written after the C.D No.9 dated 12.2.2006.

Even first case diary (in original) is available with the case file, which should have been deposited with the concerned office after proper entry in the Crime Register of SHO/Nangloi.

4. The above lapses on the part of the applicant during the investigation of the case of kidnapping in which specific directions were given by the Hon ble High Court to continue the efforts, have been viewed as amounting to gross negligence, carelessness and dereliction in discharge of duties for which he was called upon to explain the reasons for the said lapses. The applicant responded to the said Explanation vide his letter at Annexure A-5 (page 16 of paper book) which reads as follows:

In connection with the aforesaid explanation I most humbly beg to submit as under:-

With regard to remark no.1 it is submitted that after the registration of the FIR Hue and Cry notices were sent to C.R.O. on dated 16.01.2006 and 04.05.2006 which are on the Gazette of the C.R.O. The copy of the same is enclosed herewith for the kind perusal of your goodself.

With regard to mark No.2 it is submitted that the request was made to the concerned authorities vide letter dated 05.06.2006 and ultimately the photographs of the missing persons were published in the news papers dated 14.08.2006. It is respectfully submitted that I vigorously pursued the matter with the concerned authorities to get the photographs of the missing persons published in the newspapers.

With regard to remark No.3 it is most humbly submitted that on 02.01.2006 as W.T. message was flashed to the Director N.C.R.B. The copy of the said W.T. message is also enclosed herewith for the kind perusal of your Honour. It is also submitted that as per practice the copy of the C.R.O. Gazette is forwarded to N.C.R.B. on daily basis. It is also submitted that on 03.08.2006 the particulars of the missing persons were sent to N.C.R.B. through special messenger.

With regard to remark No.4 it is submitted that the undersigned personally checked the record of B.J.R.M and S.G.M. Hospitals and their mortuaries. Besides this the undersigned also checked the records of the neighboring Police Stations and these facts were duly recorded in C.D. No.3 dated 10.01.2006. The copy of the same is also enclosed for the kind perusal of your goodself.

With regard to the remark No.5 it is most humbly submitted that besides the C.D.No.6 dated 27.01.2006, the names of the persons who were interrogated were also mentioned in C.D. No.2 dated 02.01.2006.

With regard to the remark No.6, it is submitted that the case diaries were written regularly. It is most humbly submitted that the writ petition filed by the complainant was listed for hearing before the Hon ble Delhi High Court on 15.02.2006 when the undersigned attended the case and the Hon ble court after hearing arguments was pleased to dispose off the Writ Petition and the case file was also perused by the Standing Counsel. These facts were written by the undersigned in the C.D. No.10

dated 15.02.2006 and thereafter also the case diaries were written by the undersigned regularly till the investigation was with the undersigned i.e. upto 18.08.2006. Thereafter as per the orders of the worthy Joint C.P./S.R. the investigation of the case has been marked to Inspector (Investigation) P.S. Nangloi, Delhi With regard to mark No.7 it is submitted that all the case diaries were deposited with the concerned office after proper entry in the Crime Register of SHO/Nangloi. However due to inadvertence the first C.D. (in original) left with the case file. It is however submitted that as soon as the said mistake was pointed out by your goodself the same was sent to the concerned office after making proper entry in the Crime Register of SHO/Nangloi.

In view of the submissions made above the undersigned most humbly prays that the explanation may kindly be filed. The undersigned assures you goodself that he will be more careful in future while investigating the cases.

5. On perusal of the written reply, the applicant was called upon to appear in Orderly Room so that he can explain the facts in his defence more clearly. The applicant, however, did not appear in Orderly Room despite giving sufficient opportunity. Thereupon, a show cause notice was given for the same very lapses calling upon him to show cause as to why his conduct should not be censured for the said lapses within 15 days from the receipt of said show cause notice, failing which it would be presumed that he had nothing to say in his defence and exparte orders would be passed on merits. The applicant did not submit any written reply to this show cause notice within the stipulated period despite issuing reminder. Thereupon, the disciplinary authority considered the case on merits and did not find any reason to take a lenient view and accordingly confirmed exparte show cause notice for censure. The applicant preferred an appeal against the same to the Joint Commissioner of Police, Southern Range which, however, did not find favour with the appellate authority. He was also heard in person by the appellate authority wherein he stated that an explanation notice was issued to him to which he has already submitted a reply. Later on, he was called upon by the disciplinary authority but he could not appear in person whereupon a show cause notice of censure was issued. It has been noted by the appellate authority that after perusing the written reply to the explanation submitted by the applicant, the disciplinary authority called upon him in the Orderly Room six times so that he could have explained his case clearly but he failed to avail this opportunity. Therefore, a show cause notice of censure was issued to him to which he did not submit any reply representing against the proposed punishment. The scrutiny of the case file revealed certain discrepancies which the applicant failed to explain satisfactorily. It has thus been found that the applicant did not inform the incident of kidnapping with the particulars of missing persons to NCRB. Nor the records of the hospitals/mortuary have been checked to get any clue. The fact of the case revealed that the applicant did not take any interest to investigate the case properly. In the facts and circumstances of the case, the appellate authority did not find the punishment of censure as excessive. Accordingly, the appeal was rejected.

6. The action of the respondents as aforesaid has been challenged by the applicant on a number of grounds.

7. The main thrust of the applicant's challenge has been that he has been punished for not appearing in person in the Orderly Room before the disciplinary authority. It has been submitted that he had never been called to appear in the Orderly Room. Furthermore, if he has been punished for not appearing in the Orderly Room, the applicant ought to have been charged for this and consequently for the act of insubordination instead of proceeding to punish him for the alleged lapses, which, in any case, he has already explained in his reply to explanation. Instead of considering his reply on merit, he has been punished for not appearing in the Orderly Room. It has been strongly urged that the authorities are not expected to be egoistic while functioning as quasi-judicial authorities and on the contrary, have a duty to act fairly and judiciously. It has further been submitted that the case was still at the investigation stage and not reached finality and he cannot be held responsible for improper investigation for the reason of tracing the kidnapped persons. Even the District Investigation Unit to whom the case was later entrusted, has given untraced report. It has further been submitted that there are reference to Hon'ble High Court's directions, without specifying as to what those directions were. Yet he has been punished on this ground which tantamounts to taking into consideration the extraneous matter having the effect of vitiating the impugned action. It has been further submitted that even the SHO had also been proceeded against on similar allegations but the proceeding against him has been dropped subsequently. It has further been submitted that the action against the applicant through issuance of explanation and show cause notice has been on the direction of the Joint Commissioner, Southern Range who also happens to be the appellate authority in the matter. The disciplinary authority, being subordinate to Joint Commissioner concerned to the case, is not expected to be fair in the circumstances of the case. Furthermore, the act of Joint Commissioner acting as an appellate authority is in violation of law for no one can be judge of his own cause. The learned counsel for the applicant has referred to the case of Union of India & others Vs. J. Ahmed (AIR 1979 SC 1022) wherein the misconduct has been defined as the one arising out of ill-motive. The mere act of non-appearance in the Orderly Room would not constitute misconduct. Accordingly, it is submitted that there is no misconduct in the present case on the part of the applicant for which he can be awarded any punishment. On the strength of aforesaid contention, it has been submitted that the impugned orders are liable to be quashed and set aside.

8. The applicant's contentions as aforesaid have been opposed by the respondents. It has been submitted that the applicant himself is primarily responsible in the matter for he has not availed the opportunity to explain the lapses alleged to have been committed by him. His reply to the Explanation was not found satisfactory by the disciplinary authority. The applicant was, therefore, called upon to appear in person in the Orderly Room to explain the matter. It is incorrect to state that he was not called to appear in the Orderly Room as claimed by the applicant. He was called in Orderly Room for not less than six times. He has thus been called in Orderly Room on 1.11.2006, 8.11.2006, 15.11.2006, 22.11.2006, 29.11.2006 and 6.12.2006. He neither appeared in person in Orderly Room nor intimated the reasons for his inability to do so. In these circumstances, he was issued a show cause notice for which he did not bother to reply at all. He has not been punished for his non-appearance in Orderly Room. These facts have been referred to as reasons for taking ex parte decision against the applicant. The fact remains that the lapses on the part of the applicant remain unexplained to the satisfaction of the disciplinary authority for which his conduct has been censured. The directions of the Hon'ble High Court in the matter are spelt out in the Explanation

Notice itself for continuing the efforts for tracing the kidnapped person. The action against the SHO concerned has been dropped on its own facts and merits and no parallel inference can be drawn on the case of the applicant. The dropping of proceeding against the SHO would, therefore, not extend any benefit to the applicant and his case would be dealt with on its own merits. Furthermore, the Joint Commissioner of Police has ordered scrutiny of the case file with reference to the complaint received from Smt. Mahendri Devi. The letter seeking Explanation and the show cause notice have been issued with reference to the discrepancies noticed during the scrutiny of the case file. By this, the Joint Commissioner of Police does not become party to the cause so as to say that he has acted as a judge in his own cause.

9. So far as the applicant's reply is concerned, it has been submitted by the respondents' counsel that there are certain facts in the Explanation Notice which remain unexplained even after receipt of the reply given by the applicant. Our attention has been drawn to Para 2 of the Explanation which pertained to non-submission of copy of newspaper cutting. In this connection, the applicant had furnished the copy of cutting of newspaper dated 14.8.2006. The learned counsel for the respondents pointed out that whereas the explanation is dated 4.8.2006. The copy of the newspaper cutting as has been furnished by the applicant in support of his claim, clearly shows that the applicant had not taken any action till issuing of explanation notice to him. He was thus called upon to explain as to why this action was not taken earlier by him before the issuance of the Explanation Notice to him.

10. The learned counsel for the respondents has also drawn our attention to the administrative instructions regarding issuance of show cause notice for censure. It has been provided that if no reply is received within the given stipulated time, the show cause notice should be confirmed *exparte*.

11. The learned counsel for the respondents vehemently urged that the judicial review has limited scope and the courts do not sit as appellate authority over the decision of the disciplinary authority. The judicial review is confined to decision-making process and if the same is fair and all the formalities thereto are duly complied with, then the action of the disciplinary authority would not call for any interference. Sufficiency/adequacy of the matter is a matter to be decided by the disciplinary authority concerned. The present case cannot be said to be a case of no evidence. It has, therefore, been submitted that the impugned actions are legally in order and the application is liable to be dismissed being devoid of substance.

12. We have given our careful consideration to the respective submissions made by both the parties. We have also carefully perused the records of the case.

13. At the very outset, it would be expedient to recapitulate the scope of judicial review by this Tribunal in the disciplinary matters. This aspect has been very aptly dealt with by the Hon'ble Supreme Court in *High Court of Judicature at Bombay through its Registrar Vs. Udaysingh & others* (AIR 1997 Sc. 2286) wherein it has been observed that "The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High

Court under Art.226 of the Constitution of India was taken away by the power under Art. 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessary correct in the view of the Court or Tribunal, when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4374), State of Tamil Nadu v. T. V. Venugopalan, (1994) 6 SCC 302 : (1994 AIR SCW 3947) (SCC para 7), Union of India v. Upendra Singh (1994) 3 SCC 357 : (1994 AIR SCW 2777) (SCC para 6), Govt. of Tamil Nadu v. A. Rajapandian, (1995) 1 SCC 216 : (AIR 1995 SC 561) (SCC para 4) and B. C. Chaturvedi v. Union of India (1995) (6) SCC 749 (at pp. 759-60) : (1995 AIR SCW 4374)."

It has further been observed by the Hon ble Supreme Court in this case that The scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see what there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion.

14. Applying the aforesaid principles to the facts of the present case, it cannot be said to be a case of no evidence. The lapses attributed to the applicant have clearly been spelt out by the respondents in their Explanation Notice and show cause notice to the applicant. The reply furnished by the applicant to the Explanation has not been found satisfactory by the concerned authorities. The copy of newspaper cutting dated 14.8.2006 is apparently subsequent to the date of Explanation Notice dated 4.8.2006 as pointed out by the learned counsel for the respondents. Furthermore, in response to Point No.7 of the Explanation Notice relating to the availability of the first case diary in original in the case file which should have been deposited with the concerned office after proper entry in the crime register of SHO//Nangloi, the applicant himself admitted in reply to this point that the first case diary in original was left with the case file but the same was submitted as soon as the said mistake was pointed out by the Dy. Commissioner of Police after making proper entry in the Crime /Register of SHO/Nangloi. The applicant was called upon to explain the discrepancies which he failed to do so inspite of sufficient opportunity. Furthermore, in the concluding para of his reply, the

applicant himself has assured that he would be more careful in future while investing the cases, meaning thereby he is less careful than what is required of him. Thus, the present case cannot be said to be a case of no evidence. The applicant cannot derive any benefit from the dropping of the proceedings against SHO concerned. Each case has to be decided on its own facts and merits. There is nothing to show in the records that the applicant has been awarded censure for non-appearance in orderly room. Nor is there on record to indicate if the disciplinary authority has acted in an unfair manner or on the instruction of the higher authorities. The plea of the applicant that this is a case of ongoing investigation and he could have been proceeded against only upon the conclusion of the investigation for any lapse has no merit. If any lapse is noticed even during the course of the investigation, the applicant can legitimately be held accountable for the same. notwithstanding the fact that the investigation is going on. We also do not find any substance in the applicant's contention that the appellate authority has acted as a judge in his own cause. When a complaint had been received in the matter from Mahendri Dev, the Joint Commissioner of Police was duty bound to take action on it. He had directed the scrutiny of the case file whereupon it would be determined by the concerned authority as to what further action was required in the matter. The subsequent Explanation Notice and show cause notice have been with reference to the lapses noticed during the scrutiny of the case file. There is no allegation of bias against the appellate authority or the disciplinary authority. An authority discharging functions under statute/rules is not disqualified from acting on the ground of an official bias. The appellate authority, in the present case, is not, in any way, disabled from acting as an appellate authority in the matter under the relevant disciplinary rules merely for the reason that it has directed scrutiny of the case file upon receipt of a complaint from Mahendri Devi. We find support in this regard from the case of *The Registrar, Co-operative Societies Vs. Dharam Chand and others* (AIR 1961 SC 1743). In this case, it has been held that the fact that the Registrar gave notice for the purpose of the removal of the managing committee was no reason to hold that he would be biased in the investigation of individual responsibility of various members of the managing committee in the matter. There could not be any official bias in the Registrar on this ground in connection with the dispute and such bias would not disentitle him to act as a judge or arbitrator under Rule 18. It was further held that even though the Registrar was the administrative head of the Department, there was nothing inherent in the situation which showed any official bias towards him so far as adjudication of dispute is concerned, as there was no reason to suppose that if any of his subordinates or the auditors appointed by him were in any way found to be connected with the fraud he would not put the responsibility where it should lie. Therefore, there was nothing inherent in the situation which made the Registrar a biased person who could not act as judge or arbitrator in the case. This squarely applies to the present case. The fact that he had directed scrutiny of case file upon the receipt of complaint of Mahendri Devi, would not debar the disciplinary authority from acting as appellate authority under the Disciplinary Rules for the reason being a biased person and a judge of his own cause. The case of *Union of India & others Vs. J. Ahmed* (supra), as relied upon by the learned counsel for the applicant, is not of much help to him. The definition of misconduct, as referred to by the applicant, is contained in Stroud's Judicial Dictionary. The case is distinguishable on facts as can be seen from the observations made by the Hon'ble Supreme Court to the effect that the personal qualities which a man is having for holding the post of Deputy Commissioner, may be relevant for consideration on the question of retaining him on the post or for promotion but such lack of personal qualities could not constitute misconduct for the purpose of disciplinary proceeding. In the present case, the applicant has not been proceeded



against for lack of any personal quality or the attitude. The injunctions in the Conduct Rules may clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct as has been held by the Hon ble Supreme Court.

15. In the facts and circumstances of the case and for the reasons stated above, there is no warrant to interfere in the impugned orders. The application is devoid of substance and the same is accordingly dismissed. No order as to costs.

(Dr. Dharam Paul Sharma)  
Member (J)

(Dr.A.K.Mishra)  
Member

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