
(2020) 06 CAT CK 0009

Central Administrative Tribunal Principal Bench, New Delhi

Case No: Original Application No. 66 Of 2015

Ct. Mohd. Ibrahim, No.
538/C

APPELLANT

Vs

Govt. Of NCTD &
Others

RESPONDENT

Date of Decision: June 23, 2020

Acts Referred:

Delhi Police (Punishment And Appeal) Rules, 1980 & Rule 16#Central Civil Services
(Classification, Control And Appeal) Rules, 1965 & Rule 15(2)

Citation: (2020) 06 CAT CK 0009

Hon'ble Judges: Ashish Kalia, Member (J); Mohd. Jamshed, Member (A)

Bench: Division Bench

Advocate: Sachin Chauhan, Sumedha Sharma

Final Decision: Partly Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant is a constable in Delhi Police. He was posted at Police Station (PS),
Jama Masjid in the year, 2009 under SHO PS, Jama Masjid. The

applicant was issued a charge memorandum dated 11.01.2010 initiating disciplinary
enquiry against him under Rule-16 of Delhi Police (Punishment

and Appeal) Rules, 1980. Summary of the allegations reads as under:-

“It is alleged you Const. Ibrahim, No. 538/C(PIS No. 2895653) while posted at
P.S. Jama Masjid, that on 21.07.09 during area patrolling some

public persons as well as SI Mohd. Faiyaz and Ct. Mukhtiar Ahmed, No. 2032/C informed
SHO/Jama Masjid that, Const. Ibrahim, NO. 538/C took

one youngster namely Dilshad aged 17/18 years from the group of Islamic Jamat came from Haryana to offer Namaj at Jama Masjid to police post

Jama Masjid and compelled said youngster for unnatural sex curse with him, on being refused by said youngster, you Ct. Ibrahim beat said youngster

and kept his mobile phone Nokia without SIM card and Golden type chain. Earlier also some verbal complaints against you Const were come to notice

in this regard as you are habitual for the same. Mobile phone and chain, which were recovered from the possession through seizure memo and

deposited to PS Malkhana Facts were apprised to DCP/Central Distt. over mobile phone. Worthy DCP/Central Distt. ordered (verbally) to repatriate

you Ct. Ibrahim NO. 538/C to Distt Lines, Central Distt, PS Pahar Ganj Delhi. You Ct. Ibrahim was repatriated to Distt Lines through Ct. Narender

No. 1065/C vide DD No. 69B dated 21.7.09 PS Jama Masjid and subsequent DD No. 40 dated 21.7.09 Distt Lines Central Distt, PS Pahar Ganj

Delhi was lodged.

The above act on the part of Const Ibrahim No.538/C amounts to gross misconduct, negligence and dereliction in discharging your official duties, thus

become you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal Rules), 1980.

2. Subsequently, disciplinary enquiry was held, providing the applicant opportunities to defend his case. The Inquiry Officer (IO) submitted his finding

on 22.9.2011. During the enquiry Prosecution Witnesses (PW) No. 1,2,3,6,7, 8 and 9 supported the allegations however PW No. 4 and 5, who were

private citizens and had earlier given submission supporting the allegations before the SHO, Jama Masjid on 21.07.2009 regarding alleged incident, did

not support the allegations during the enquiry. The IO concluded that both PW No. 4 and 5 did not support the allegations during the enquiry that the

applicant had taken one mobile phone and golden colour chain from a boy named Dilshad and other allegations. The IO concluded that the charges are

partly proved. The disagreement note was issued to the applicant on 13.03.2012. Representation against the same was considered and vide order

dated 30.03.2012, the disciplinary authority imposed the punishment of forfeiture of three years of approved service with cumulative effect

(permanently) on the applicant. The applicant preferred a detailed representation to the appellate authority. The Appellate Authority vide order dated

17.11.2014 rejected the appeal and upheld the punishment imposed by the disciplinary authority. The applicant contends that the entire case was based

on the evidence of PW No. 4 and 5, who during the enquiry did not support the allegations and, therefore, IO incorrectly concluded the charge as

partly proved. The applicant had raised this point in his representation in respect to the disagreement note, however, the same was not considered and

a very harsh punishment has been imposed on him. He submits that the Appellate Authority also did not consider his representation and in an arbitrary

and biased manner upheld the punishment imposed by the disciplinary authority. The present application has been filed seeking the following relief(s):-

“ (i) To quash and set aside the order dated 11.01.2010 whereby a departmental enquiry is being initiated against the applicant, Disagreement note

dated 13.03.2012, order of punishment dated 30.03.2012 and order of appellate authority dated 17.11.2014 and to further direct the respondents that

forfeited year of service be restored to the with all consequential benefits including seniority and promotion and pay allowances.

(ii) To set aside finding of the enquiry officer to an extent as it proves an extraneous charge against the applicant.

(iii) Any other relief which the Hon’ble Court deems fit and proper may also be awarded to the applicant.

3. The respondents in their counter-affidavit have opposed the OA and submitted that the applicant was correctly charge-sheeted for the offence

committed by him. It is submitted that the applicant has been issued a charge memorandum for the offence committed by him on 21.07.2009. It is

stated that the information of this incident was also conveyed to the concerned authorities on the same day and the applicant was shifted from his

posting that is from SHO PS station Jama Masjid to Distt. Lines, Central Distt, PS Pahar Ganj, Delhi. The IO examined 9 witnesses during the enquiry

out of which 07 supported the allegations levelled against the applicant and only two private witnessess that is PW No. 4 and 5 turned hostile. The IO,

however, concluded that charge is partly proved. Disagreement note was issued to the applicant giving detailed reason for the disagreement and

seeking representation against the disagreement note from the applicant. Applicant submitted his reply which was duly considered by the disciplinary

authority and punishment of forfeiture of three years of approved service with cumulative effect (permanently) has been imposed. The same was

upheld by the appellate authority after giving him personal hearing and also indicating that a lenient view has been taken for the grave offence

committed by him In support of his claim the applicant has relied upon the judgement of this Tribunal in OA No. 1064/2008, OA No. 577/2009 which is

in connection of the nature of the disagreement note i.e whether the same continues to remain tentative and when does it assume finality of the guilt of

the charged officer. The applicant has also relied upon the judgement of this Tribunal in OA No. 3612/2014 and OA No. 2463/2015, in the matter of

disagreement note.

4. We heard Mr. Sachin Chauhan, learned counsel for the applicant and Ms. Sumedha Sharma, learned counsel for the respondents.

5. The applicant has filed the present OA seeking the relief from the Tribunal in terms of quashing and setting aside the departmental enquiry, the

disagreement note, order of punishment of disciplinary authority and appellate authority and seeking restoration of the forfeitured service with all

consequential benefits. Learned counsel for the applicant vehemently argued that the disagreement note issued by the disciplinary authority is not

tentative in nature and the disciplinary authority has concluded that, in his opinion the charge is fully established. It has also been argued that the two

main PW No. 4 and 5 who were private citizens, turned hostile during the enquiry and thus the charge is only partly proved against the applicant.

Argument by the learned counsel for the respondents is on the ground that the disciplinary proceedings in service matters are based on preponderance

of probability and not entirely on evidence. In this case also it is argued that, 07 witnesses have supported the allegations. The very fact that the matter

was immediately reported to the concerned authorities proves that the incident did take place. It was also argued by the respondents that the tentative

nature of the disagreement note is not a ground in this case as the charges are partly proved by the IO.

6. From the facts of the case on record and the arguments it is evident that the applicant was on duty on 21.07.2009 on his beat near PS Jama Masjid.

He apprehended a 17/18 year old boy and took from him a mobile phone and golden colour chain. These items were kept by the applicant with

himself. The applicant has also accepted that he later sent the boy to search for his brother. However, the boy never returned back and items taken

from him were not immediately deposited in the police station. PW No. 1 and 2 who were at the site have confirmed their statement that they were

posted at Jama Masjid area and were informed by some persons that the applicant had taken mobile phone and golden colour chain from a boy and

threatened to sexually abuse him. Later he sent the boy to fetch his brother, however, the boy never returned back. This matter was also brought to

the notice of Sub Inspector and SHO of the police station by the on duty staff. Much later, the mobile phone and the golden colour chain was

deposited in the police station. The matter was also brought to the notice by SHO to higher authorities same day. The applicant was shifted from PS

Jama Masjid to Distt. Lines, Central Distt., PS Pahar Ganj, Delhi. This in itself is a proof that the incident took place. The applicant denies having

asked the boy for unnatural sexual favour. The applicant also submits that he deposited the mobile phone and golden colour chain in the police station.

The entire claim of the applicant of his non involvement in this case hinges upon the two prosecution witnesses who turned hostile. These two PW No.

4 and 5 had already given their statement which has been corroborated by other PW No. 1 and 2. In the charge memorandum there is only one

charge alleging that during patrolling on 21.07.2009 the applicant took the mobile phone and golden colour chain from one boy and also beat him and let

him go. It is also indicated in the charge memorandum that the mobile phone and golden colour chain which were recovered from the applicant were

deposited in the PS. Thus, this act of the applicant shows gross negligence and dereliction in discharging his official duties.

7. The IO held the charges as partly proved. The disciplinary authority in a detailed disagreement note tentatively disagreed with the conclusion of IO

and further provided detailed reasoning. It is also stated that if the boy was in suspicious condition, then why was he allowed to go by the applicant and

why did the applicant did not deposit the mobile phone and gold colour chain in the PS immediately. Detailed orders have been passed on receiving the

representation of the applicant by the disciplinary authority and the appellate authority has also considered the representation after giving a personal

hearing and upheld the punishment. It is evident from the OA that the point of disagreement note being tentative has not been raised. This

aspect has also not been highlighted by the applicant in his representation made to the disciplinary authority and appellate authority. However, during

the argument only this point has been taken up by the learned counsel for the applicant. He has also relied upon a few judgement of this Tribunal in

cases where the charges have not been proved and it has been held that the disagreement note has to be tentative and not conclusive. This case,

however, is different from those cases where charges have not been proved. In this case, the charge is partly proved. The disciplinary authority has

rightly observed that the whole incident arose out of a single incident of the applicant apprehending a boy and asking him for sexual favours and also

taking away his mobile phone and golden colour chain. He also let the boy go after sometime keeping these items in his possession and not depositing

the same at the PS immediately. Two PWs have turned hostile during the enquiry, despite having given earlier version to the contrary. It is also a fact

that other staff on duty of the same police station have confirmed having been told about the incident which matches the details given by the applicant

himself about the incident. Detailed disagreement note is a show Cause Notice issued to the applicant indicating that disciplinary authority does not

agree with the findings which are partly proved and find that in view of various reasons enumerated in the disagreement note that the charges are fully

established. An opportunity has also been given to the applicant.

8. However the very language of the disagreement note is "conclusive". Although in the initial part it is indicated that it is tentative, in the last

para it is stated that disciplinary authority disagrees with the findings and the charge is fully established against the applicant. Judgement of this

Tribunal in OA No. 3612/2014 dated 20.12.2018 also covers this case. DOPT OM dated 12.11.2010 regarding communication of tentative reasons for

disagreement under Rule 15(2) of the CCS (CCA) Rules, 1965 clarifies, as to how, the disagreement note should be worded. The OM dated

12.11.2010, reads as under:-

"Subject: Communicating tentative reasons for disagreement under rule 15(2) of the CCS (CCA) Rules, 1965.

The undersigned is directed to say that rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 states that 'The

Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by Disciplinary Authority or where the

Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for

disagreement, if any, with the findings of Inquiry Authority on any article of charge to the Government Servant who shall be required to submit, if he

so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or

not, to the Government Servant.

2. The necessity of following the aforementioned rule 15(2) both in letter and spirit is reiterated. The communication forwarding the 1O's report

alongwith the tentative reasons for disagreement, if any, seeking comments/representation of the Charged officer should reflect this Position. All

Ministries/Departments are, therefore, requested to ensure that the communication forwarding 'the 1O's report etc. does not contain phrases such as

'Article of charge is fully proved' or 'Article of charge is fully substantiated' which could be construed to mean that the disciplinary - authority is biased

even before considering the representation of the charged officer and this would be against the letter and spirit of the CCS (CCA) Rules, 1965.

3. Ministry of Finance etc. may bring the contents of the above OM to the notice of all concerned.

In the present case, disagreement note dated 13.03.2014, in the last para states that the charge against the applicant is fully/clearly established. This

very language has been prohibited in terms of O.M. quoted above.

9. In view of the clearly laid down rulings in this matter the present OA is partly allowed to the extent that the disagreement note and the penalty order

of disciplinary authority and appellate authority are quashed and set aside and the respondents are directed to proceed in the matter afresh from the

stage of receipt of IO's report and take appropriate action including issue of disagreement note as per rules within a period of three months from

the date of receipt of this order. There shall be no order as to costs.