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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) No. 11280/2016**

Date of decision: 30th November, 2016

ATUL SOOD

..... Petitioner

Through Mr. S.C. Sagar & Mr. Pradeep
Sehrawat, Advocates.

versus

DELHI POLICE & ANR.

..... Respondents

Through Mr. Sunil Goel & Ms. Supreet Bimbra,
Advocates for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioner's challenge to the penalty of censure, in OA No. 487/2014 stands rejected vide impugned decision dated 22nd September, 2016 by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short).

2. The petitioner who was working as SHO, Sarojini Nagar Police Station was issued show cause notice dated 16th April, 2013 to which a reply was filed. The disciplinary authority, after examining the factual matrix, vide order dated 30th April, 2013 had imposed punishment of censure. The petitioner had filed an appeal, which was dismissed vide order dated 7th January, 2014.

3. Two contentions have been raised by the petitioner. A similar show cause notice was issued to Inspector Kirori Lal, but in his case penalty of censure was set aside by the same appellate authority, which had considered the case of the petitioner. Secondly, the petitioner was not earlier informed about the lapses and faults and, therefore, the award of penalty of censure was not justified and is shockingly disproportionate.

4. The first contention, it is accepted by the counsel for the petitioner, was not raised in the OA and has not been examined in the impugned order. The said contention, without the relevant facts and similarities or dissimilarities on records, cannot be a ground to uphold and accept plea of discrimination under Article 14 of the Constitution. We have to proceed on the facts of the present case and whether the punishment of censure as imposed should be interfered with applying the doctrine of proportionality.

The show cause notice dated 16th April, 2013 reads as under:-

“Explanation notices were issued to Insp. Atul Sood, No. D-3013 (PIS No. 16900058) (SHO Sarojini Nagar) vide this office Nos. 15901-03, 15904-06, 15907-09, 15910-12, 15913-15, 15916-18, 15919-21, 15922-24, 15886-88, 15889-91, 15892-94, 15871-73/SDP (P-1), dated 30.10.12, on the allegations that time and again it has been emphasised to keep a tab on the known criminal and their minute detail should be made part of their History sheet. To check the efforts made by him in updating the record of known criminal an exercise was undertaken. During this exercise History sheet of Sanjay @ Sanjoo s/o Vijay Sharma, r/o Vagabond, Sarojini Nagar, Sohan Lal S/o Bhagat Raj, R/o Jhuggi

No. 39, Cement Godown, Netaji Nagar, Ramesh Kumar @ Mayun S/o Ram Singh R/o C-II/43, Servant Qtr. Moti Bagh-I Delhi & Village Seuci, Distt. Pauri Garwal, Uttarakhand, Ashok KUMAR S/o Banwari Lal R/o 2729, Netaji Nagar, Vinod S/o Veer Bahadur R/o F-1957, Netaji Nagar, Rishi Raj S/o Sh. Rajpal Singh R/o E-1721, Netaji Nagar, Surender Singh S/o Ram Chander R/o 1223, Laxmi Bai Nagar, Devender @ Dabba R/o MPT-407, Sarojini Nagar, Umesh Shah s/o Om Prakash @ Habansh Gupta R/o P-10, Pillanji Village, Sarojini Nagar, Sadhu Kumar s/o Habansh Gupta R/o P-10, Pillanji Village, Rajesh S/o Bharat Singh R/o P-170, Pillanji Village, Madan Lal @ Maddi S/o Munshi Ram R/o 40/05, Lal Qtr. Opp. Pillanji Village, Sarojini Nagar were checked and many shortcomings have been noticed.

Despite repeated directions to maintain the history sheets according to the guidelines issued by the PHQ, the history sheets have not been maintained in proper manner. Being the local police, to know the each and every details of bad characters of the particular areas should be maintained. It helps in proper surveillance and assists local police in preventing the crime. Non compliance of directions in this regard clearly shows lackadaisical approach on the part of Inspr. Atul Sood, No. D-3013 (SHO/Sarojini Nagar, which also adversely affects the overall perception about South District that the known criminals are roaming free and no effective surveillance is being kept to check their movement despite specific directions that all minute detail should be recorded in History sheets.

The copies of explanation notices were sent to SHO/PS Sarojini Nagar for its self receipt and to send his reply in response to above said explanation notices, but despite repeated reminders dated 19.11.12, 29.11.12 and 09.01.13, the Inspector neither acknowledged the notices nor submitted his written replies till date. All this shows that he has nothing to say in his defence rather admit his guilt. Non submission of acknowledgement and reply to the official correspondence also amounts to indiscipline on the part

of Inspr. Atul Sood, No. D-3013. Therefore, it has been decided to issue show cause notice for censure to Inspr. Atul Sood, No. D-3013 (SHO/Sarojini Nagar).

Inspr. Atul Sood, No. D-3013 (PIS No. 16900058) (SHO/Sarojini Nagar) 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 07 days from the date of its receipt, failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex-parte on its merit.”

5. The petitioner in his reply dated 27th April, 2013 had submitted that the shortcomings observed in the history sheets had been rectified, records were updated and compliance had been subsequently made. He had requested that lenient view may be taken. The exact portion of the said reply reads as under:-

“....It is submitted that the shortcomings observed in the History Sheets have been rectified, record updated and compliance done. It is therefore requested that a lenient view may be taken and the SCN for Censure issued to the undersigned may kindly be filed.”

The petitioner had effectively accepted the omissions and faults on his part, which were subsequently remedied and made good.

7. The impugned order of penalty refers to as many as twelve explanations/communications to the petitioner, to keep a tab on the known criminals, etc. The petitioner was required to maintain and furnish details of the history sheeters, as prescribed by the guidelines. Reminders dated 19th November, 2012, 29th November, 2012 and 9th January, 2013 were

issued, as the petitioner had failed to respond or even acknowledge the communications. The petitioner had updated the records only after the show cause notice was issued to him. The disciplinary authority had reflected upon the factual position, lapses and omissions while imposing punishment of censure. The order of the appellate authority records that it was obligatory on the part of the petitioner to update the history in accordance with the instructions, which should have been followed by the petitioner. A casual approach and lackadaisical conduct or attitude could not be condoned in the disciplined force.

8. Whilst exercising the power of judicial review to examine the quantum of punishment, we do not function as a court of appeal. Normally, we would not substitute our own conclusion or penalty, unless the punishment imposed is found to be arbitrary and irrational in the sense that it 'shocks the conscience of the court'. In ***B.C. Chaturvedi v. Union of India*** (1995) 6 SCC 749, it was held:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the

penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

For the reasons recorded in Paragraph No. 7, we feel that the punishment of censure is not “disproportionate” to warrant interference.

9. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 30, 2016
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