



2026:DHC:2666-DB



§~4 (02.03.2026)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 28th March, 2026*+ **W.P.(C) 6255/2016**GNCT OF DELHI THROUGH COMMISSIONER OF
POLICEPetitionerThrough: Mr. Neeraj, SPC with Mr. Sahaj
Garg, Adv.

versus

KISHOR KUMARRespondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T (O R A L)****AMIT MAHAJAN, J.**

1. This matter has been listed today on account of declaration of holiday on 02.03.2026 by notification No. 64/G-4/Gen1.-I/DHC dated 27.02.2026.

2. The present Petition is filed assailing order dated 26.02.2016 (hereinafter '**impugned order**') passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter '**Tribunal**') in O.A. No. 3526/2013, whereby the Original Application filed by the Respondent/ Mr. Kishore Kumar was allowed.

3. Briefly stated, the Respondent was working as SHO at Sarojini Nagar Police Station. The Respondent was issued an Explanation Notice dated 27.01.2011, seeking explanation as to why he had not removed encroachment in front of shops and on pavements in Sarojini



Nagar Market.

4. The Reply submitted by the Respondent to the above Notice, was found unsatisfactory by the Disciplinary Authority and he was issued the Show Cause Notice dated 23.02.2011, proposing a punishment of censure for the lapse and inaction.

5. The Respondent submitted his Reply to the above Notice, explaining that the removal of the encroachment from the market concerned was the duty of the land-owning agency i.e. NDMC and one inspector of NDMC and his staff was also present in the Sarojini Nagar market area for the purpose of removing illegal encroachments. He explained that he had taken several actions and several measure to remove unauthorized encroachment from the Market i.e. 350 challan have been made, 74 vehicles have been impounded and 72 times various abandoned articles of vendors were deposited which shows that he had followed the instructions of senior officers to remove encroachment. He also emphasised that on the date of the alleged lapse, one SI, one ASI, two Head Constables and Five Constables and ORT Team were on duty in market to take action in respect of the illegal encroachment in the market area.

6. The Disciplinary Authority, after rejecting the contentions of the Respondent, passed an order dated 23.03.2011, imposing a punishment of censure upon the Respondent. Aggrieved thereby, the Respondent approached the Appellate Authority, however, the appeal of the Respondent was dismissed *vide* order dated 16.06.2011.

7. Thereafter, the Respondent was again subjected to disciplinary action for the exact same set of allegations regarding encroachment in



Sarojini Nagar Market and a departmental enquiry was ordered against him *vide* order dated 27.10.2011, however, the said proceedings were closed by the Commissioner *vide* order dated 19.06.2012.

8. However, just four days after the said proceedings were closed, another Show Cause Notice, dated 22.06.2012, was issued by the Disciplinary Authority to the Petitioner. After consideration of the very same submissions as had been made in the previous proceedings by the Respondent, the Disciplinary Authority, vacated the Show Cause Notice *vide* Order dated 18.07.2012.

9. The Disciplinary Authority, on the same set of facts, held that the Sarojini Nagar Market was a busy market and the support of other agencies such NDMC was required for keeping the road free from encroachment and therefore, it would not be justified to hold the Respondent guilty as measures taken by him to prosecute encroachers was satisfactory.

10. In view of the observations made in the aforesaid proceedings, the Respondent approached the learned Tribunal challenging the order dated 23.03.2011 passed by the Disciplinary Authority, along with order dated 16.06.2011 passed by the Appellate Authority.

11. The learned Tribunal observed that the Disciplinary Authority could not have passed two different and contradictory orders, for the same lapse, one holding the Respondent guilty and the other giving him a clean chit. Thus, the Show Cause Notice dated 23.02.2011, order dated 23.03.2011 and the order dated 23.03.2011, were set-aside. The learned Tribunal observed that in light of the subsequent orders passed by the Disciplinary Authority, these previously passed



orders imposing punishment reflect non-application of mind on part of the Disciplinary Authority and Appellate Authority.

12. Aggrieved, the present petition has been filed.

13. The learned counsel for the Petitioner essentially submits that there is a substantial delay in filing of the O.A. assailing the previous orders which were passed in the year 2011 and the O.A. was only filed in the year 2013. It is further emphasised that the subsequent order passed in the year 2012 would have no bearing on the previously passed order as they are separate proceedings emanating from different Show Cause Notices. Even otherwise, the penalty imposed was only a minor punishment which would have resulted in a delay in promotion of the Respondent for about 6 months.

14. The impugned order along with the relevant documents have been perused.

15. At the outset, it is apposite to mention that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the orders passed by the Tribunal. The scope of judicial review is limited to examining the decision-making process and not the correctness of the decision on merits. Unless the impugned order suffers from perversity, patent illegality, violation of principles of natural justice, or lack of jurisdiction, interference by the writ court is not warranted and re-appreciation of the merits or substitution of the Tribunal's view with another plausible view is impermissible.

16. In the present case, the limited ground agitated by the petitioner before the learned Tribunal as well as before this Court is that of



limitation. Although the original application was admittedly filed with delay, however, the learned Tribunal has rightly condoned the delay in filing by taking note of the Respondent's contention that he came to know of the effect of the punishment of censure only in July, 2013 when the same affected the promotion of similarly placed employees.

17. A bare perusal of the Respondent's application for condonation of delay indicates that another reason for delay was that the Respondent was under the impression that once the Notice based on the same allegations had been vacated on 18.07.2012 by the Disciplinary Authority, appropriate decision was expected to have been taken in respect of the subject Notice as well. This Court is of the opinion that the explanation tendered by the Respondent for delay is plausible and meets the threshold of 'sufficient cause'.

18. It is also pertinent to note that the Petitioner has not even endeavoured to contest the matter on merits.

19. Moreover, it is noteworthy that the submissions advanced by the applicant in response to the impugned Show Cause Notice are substantially identical to those raised by him in reply to the subsequent Show Cause Notice dated 22.06.2012. In that later proceeding, the Disciplinary Authority itself concluded that the applicant could not be held responsible for not removing the encroachments.

20. A perusal of the order dated 23.03.2011 passed by the Disciplinary Authority and the order dated 16.06.2011 passed by the Appellate Authority, reveals that, although the authorities recorded the applicant's assertions regarding the steps taken by him to maintain law



and order in accordance with the Delhi Police Act, they nevertheless, without adequate reasoning, proceeded to hold him responsible for the continued encroachments. The learned Tribunal rightly observed that such conclusions, disclose a clear infirmity arising from non-application of mind.

21. As rightly noted by the learned Tribunal, the basis for imposing the punishment of censure upon the Respondent, has been held to be untenable in an identical situation by the Disciplinary Authority. The Disciplinary Authority cannot adopt inconsistent positions, in respect of the same or substantially similar allegations. The later order, wherein due application of mind is evident and the applicant's defence has been duly considered, must prevail.

22. Thus, the learned Tribunal rightly held that the Show Cause Notice dated 23.02.2011 and the orders passed by the Disciplinary Authority dated 23.03.2011, and the Appellate Authority dated 16.06.2011, could not be sustained.

23. In view of the above, we find no reason to interfere with the impugned order.

24. The present Petition is dismissed. Pending applications (if any) also stand disposed of.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MARCH 28, 2026

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