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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3380/2002

New Delhi, this the 5th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Assistant Sub-Inspector Jai Chand
B-2/165, Sultan Puri
New Delhi

.. Applicant

(Shri Sachin Chauhan, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Joint Commissioner of Police
Special Cell
Police Hqrs., IP Estate, New Delhi
2. Dy. Commissioner of Police
Special Cell (SB)
Police Hqrs., IP Estate, New Delhi .. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER(oral)

Justice V.S. Aggarwal

Applicant, in October-November, 1984, was Head Constable posted Police Station, Sultanpuri. By virtue of the present application, he seeks quashing of order passed by the disciplinary authority dated 25.5.2001 whereby his future increments have been withheld for a period of 6 months without cumulative effect. His appeal has since been dismissed by the appellate authority dated 4.9.2002.

2. Disciplinary proceedings had been initiated against the applicant with the following summary of charge:

Summary of allegations

It is alleged that SI Jai Chand, No.906/D while posted as Head Constable at P.S.Sultanpuri, failed to discharge his duties properly during the period 31.10.84 to 3.11.84 when the riots started in the areas of PS Sultanpuri on 31.10.84 in the wake of

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the assassination of Smt. Indira Gandhi. It is clear from the records and affidavits that during Nov. 1984 riots, H.C. Jai Chand failed to rise to the occasion to protect the life and property of the Sikh residents of that area. It is evident from the record that on 1.11.84 one local M.P. addressed a meeting in the area of PS Sultanpuri which was attended by HC Jai Chand along with SHO and other staff. The gathering was instigated to take revenge against the Sikhs. Immediately thereafter, mob violence erupted with full fury and mob attacked the Gurudwara in Budh Vihar and a number of shops belonging to Sikhs were set ablaze in block No.A&C. The S.H.O. and Jai Chand HC ordered the Sikhs to go inside their houses, threatening to shoot them. Later on the mob attacked the Sikhs with full connivance of HC Shri Jai Chand, SHO Shri Hari Ram Bhatti. Shri Jai Chand, HC is alleged to have fired at one S. Jarnail Singh and killed him. H.C.Jai Chand remained with the SHO during the riots and both of them were in league with the mob and the local leaders.

Thus, Sub-Inspr. Jai Chand, No.906/D is guilty of gross negligence and dereliction of duty with malafide intention and conducted himself in a manner unbecoming of a Govt. servant, thereby violating the provisions of rule 3 of the CCS Conduct Rules, 1964 and is liable for departmental action under section 21 of the Delhi Police Act, 1978."

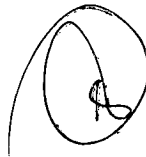
3. In pursuance of the same, Enquiry Officer had been appointed. Enquiry Officer recorded the evidence and on appraisal of the same, concluded that:

"Hence, the charges are not entirely proved.

In any case, the riots were such a spontaneous reaction where the total system of governance collapsed and it is very difficult to pinpoint the responsibility of a particular individual of such a low rank. The catastrophe was of such a high magnitude that the response of even very senior officer holding the charge of the area/District and were responsible for maintaining law and order was found wanting. But it will also be a traversity of justice that even after the killing of over 2500 innocent persons, nobody should be held responsible. Since this was the failure on the part of the entire police force meant to keep the law and order in the area, hence, the entire system is to be blamed and ASI Jai Chand also cannot be absolved of the responsibility proportionately for which he was made an in-charge.

I, therefore, hold that to that extent the charges are proved and HC now ASI Jai Chand was found guilty of negligence and dereliction of duty proportionately in the over-all situation."

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4. At this stage, it is relevant to mention that during the course of enquiry in terms of Delhi Police (Punishment & Appeal) Rules, 1980 same charge was framed and enquiry officer has recorded the said charge against the applicant:

"I was convinced that there is some element of negligence and dereliction of duty on part of the Charged Official ASI Jai Chand and a formal charge sheet was issued to him on 5.8.99 charging him while posted at police station Sultanpuri during 1984 riots which occurred after the assassinating of Late Smt. Indira Gandhi from 31.10.84 to 3.11.84 in the area of police station Sultanpuri. He failed to discharge his duty effectively to control the riots in the area and also failed to maintain law and order, which was his primary duty, thereby not taking effective steps in saving the lives and properties of the Sikhs in the area. Thus, ASI Jai Chand was found guilty of gross negligence and dereliction of duties and conducted himself in a manner unbecoming of a police officer and has to be dealt with departmental punishment of Delhi Police Act. ASI Jai Chand was further directed to submit his defence if any alongwith the list of witnesses within 15 days from the date of receipt of the charge sheet."

The disciplinary authority accepted the report of the Enquiry Officer and while imposing the penalty held:

"It is clear from the findings that E.O. has not been able to fix any direct responsibility of the defaulter regarding his negligent conduct in maintaining of law and order and has only found him guilty of negligence and dereliction of duty proportionately in the overall situation. Therefore, I, Ashok Chand, DCP/Spl.Cell/S.B. hereby order that his future increments be withheld for a period of six months without cumulative effect."

5. It is on the strength of the above said facts that the learned counsel for the applicant has argued before us that the Enquiry Officer as well as the disciplinary authority found that there was no material connecting the applicant with the charge framed and therefore there was no justification for passing the impugned orders.



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6. According to the respondents' learned counsel, it is not so because it has been established that the disciplinary authority as well as the Enquiry Officer found the applicant guilty, taking note of the totality of the circumstances on preponderance of probability.

7. We have considered the said submissions. In disciplinary proceedings when specific charges are framed, the delinquent has to face the same. In the present case in hand before us, substance of the charge was that while he was posted at Police Station, Sultanpuri, when the riots occurred after the assassination of the late Prime Minister Smt. Indira Gandhi in October-November, 1984, he failed to discharge his duty effectively to control the riots in the area and also failed to maintain law and order, which was his primary duty. It was also alleged against the applicant that he did not take effective steps in saving the lives and properties of the Sikhs in the said area and thus was guilty of gross negligence and dereliction of duties and he was directed to submit his defence to the charge referred to above.

8. The Enquiry Officer appreciated the evidence and held that the charge was ^{not} proved entirely. Thereupon on surmises and conjectures, the Enquiry Officer held the applicant guilty of dereliction of duty taking note of the fact that more than 2500 innocent persons had lost their lives. It is to be remembered that the enquiry officer was conscious of the fact that it is difficult to pin point an individual police officer of such a lower rank responsible for the incidence of such a high magnitude. Disciplinary authority had not cared to

record his note of disagreement and thereafter also held the applicant guilty of negligence and dereliction of duty proportionately in the overall situation. It is true that preponderance of probability plays an important role in departmental enquiry. In the present matter before us, findings are not with reference to any preponderance of probability in the charge framed. Findings are ~~not~~ absolutely clear, which are extraneous to the charge we have referred to above. If there was any iota of material to prove the charge, we have no hesitation in observing that such light punishment even could not be awarded. What was proved and is contested by the applicant is not established and the authority considered the overall law and order situation to punish the applicant. We have no hesitation to conclude that it was not co-related with what the applicant was contesting.

9. Resultantly, the impugned orders are quashed having been based on no material.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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