

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 909/1995

New Delhi this the 06th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Constable Stabir Singh, No.7654/DAP
S/O Manga Singh,
R/o 309A, Gali Halkara Kuan,
Jawala Nagar, Shahdara,
Delhi-110032.

... Applicant

(Shri M.K.Bhardwaj for Shri Shankar Raju, Adv.)

-Versus-

1. Union of India/Lt. Governor of
NCT of Delhi through Commissioner of Police,
I.P.Estate, MSO Building,
New Delhi.

3. Addl. Commissioner of Police
(Northern Range),
Police Headquarters, I.P.Estate,
New Delhi.

... Respondents

(By Shri Rajinder Pandita for Shri Surat Singh, Adv.)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

A penalty imposed on the applicant as a consequence of disciplinary proceedings conducted against him is impugned in the present O.A. Penalty imposed is one of forfeiture of five years' approved service permanently entailing reduction of pay from Rs.1090/- p.m. to Rs.950/- p.m. The penalty further provides that the applicant will not earn increments during the period of reduction and after expiry of the period of reduction the same will have the effect of postponing future increments. Legality of the aforesaid punishment imposed is challenged in the

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present O.A. by placing reliance on Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980. Rule 8 insofar as is relevant for the enquiry at hand, provides, thus :

"8. Principles for inflicting penalties-

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(d) Forefeiture of approved service - Approved service may be forfeited permanently or temporarily for a specified period as under :-

(i) For purposes of promotion or seniority (permanent only).

(ii) Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily.

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Based on the aforesaid rule, it is inter alia contended that forfeiture of permanent approved service can either be accompanied by reduction of pay or by withholding of increments or deferment of increments. According to the applicant reduction of pay as well as deferment of increments cannot be imposed simultaneously.

2. In our view, the aforesaid contention need not detain us any further as the aforesaid controversy has been duly resolved by decision of a Full Bench of this Tribunal in the case of **ASI Chander Pal v. Delhi Administration & Anr.**, O.A. No.2225/93 decided on 18.5.1999. The Full Bench in the aforesaid decision has formulated the following point which was referred for their adjudication :

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Whether "the penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of 'X' years with the condition that the delinquent police official would not earn increment/increments during the period of reduction and on the expiry of that period the reduction would have the effect of postponing the future increments", is in accordance with law."

3. The contention that a penalty of the nature imposed in the present case amounts to two punishments has been answered by holding that the aforesaid penalty is in accordance with law. Aforesaid decision of the Full Bench, we are informed, is pending consideration before the High Court of Delhi. Be that as it may, as far as we are concerned, we are bound by the decision of the Full Bench and we, therefore, proceed to follow the same and hold that the aforesaid contention about the illegality of the penalty imposed is devoid of merit. The same is accordingly rejected.

4. As far as merits of the disciplinary proceedings are concerned, applicant at the material time was a police constable at the Police Station Majnu Ka Tila. One SI Rajender Singh Malik was also posted at the said Police Station. Applicant and the said SI Rajender Singh Malik were found to have illegally detained one Rajinder @ Tinda during the period 28.6.1992 to 30.6.1992. Applicant had earlier apprehended the said detenu Rajinder @ Tinda from his residence unlawfully at about 2 a.m. on 28.6.1992. When the father of the detenu Shri Sant Ram visited the Police Station along with his wife and requested

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for his release, SI Rajinder Singh Malik refused to oblige on the ground that the applicant was dealing with his case. Applicant demanded a sum of Rs.1,000/- from Shri Sant Ram. During his illegal detention, the detenu was repeatedly beaten up by lathi, belt and iron rod and was also tortured by hanging with the ceiling fan and by using roller. He was released only on 30.6.1992 after his father moved the Supreme Court of India by filing a petition for issue of a writ of habeas corpus.

5. A departmental enquiry was ordered to be conducted against both the applicant as also SI Rajinder Singh. The enquiry officer completed the enquiry and submitted his findings to the disciplinary authority on 16.9.1992 holding both of them guilty of the charge. The findings of the enquiry officer were duly served on the delinquents. Applicant was given a personal hearing by the disciplinary authority on 30.11.1992. Applicant had earlier submitted his representation against the findings of the enquiry officer. The disciplinary authority considered the aforesaid findings in the light of the evidence on record and the submissions of the applicant and has found the applicant guilty. The disciplinary authority thereafter proceeded to impose the aforesaid penalty by its order dated 3.12.1992 against the applicant. Aforesaid order of the disciplinary authority was carried by the applicant in appeal and the appellate authority by an order passed on 17.5.1994 has maintained the findings of the enquiry

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officer and the disciplinary authority and has also maintained the order of penalty against the applicant.


6. We have perused the aforesaid orders of the disciplinary authority and the appellate authority and we are satisfied that the finding of guilt arrived at against the applicant is fully borne out by the material produced against him. As has been pointed out, the nature of proof required in a departmental enquiry cannot be equated with that of a criminal prosecution. Whereas in a criminal trial a finding of guilt beyond reasonable doubt has to be recorded, in a departmental enquiry a finding of guilt on the preponderance of probabilities can justifiably be given. As far as the present findings are concerned, the same are based on the material evidence on record. The orders take into account the evidence both for and on behalf of the prosecution as also for and on behalf of the defence. The said concurrent findings, we are afraid, are not open to challenge in this Tribunal. As far as the nature of penalty is concerned, we find that the charges held proved against the applicant apart from being illegal and contrary to the instructions which have been time and again issued, are barbaric and de hors of a good police officer who is entrusted with maintaining law and order and not circumventing the same by inflicting illegal torture on detainees who have been kept under illegal detention and in violation of all principles of human rights. The penalty imposed, therefore, is adequate, just and

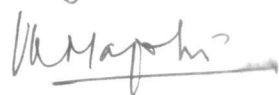
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proper and does not call for interference in the present O.A.

7. Present O.A., in the circumstances, is dismissed. There shall, however, be no order as to costs.


(Ashok Agarwal)
Chairman


(V. K. Majotra)
Member (A)

/as/