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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 955/1995

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 Sugan Singh, No.580/NE
S/O Mali Ram,
Presently Posted at Rashtrapati Bhawan,
New Delhi.

... Applicant

(Shri M.K.Bhardwaj for Shri Surender Adlakha, Adv.)

-Versus-

1. Lt. Governor, NC.T. of Delhi
through Commissioner of Police,
PHQ, MSO Building,
New Delhi.

2. Addl. Commissioner of Police,
New Delhi Range,
P.H.Q., MSO Building,
I.P.Estate, New Delhi.

3. Deputy Commissioner of Police,
North East Distt.,
through Commissioner of Police,
Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.

... Respondents

(By Shri Rajinder Pandita for Shri Devesh Singh,
Advocate)

O R D E R (ORAL)

Shri V. K. Majotra, AM :

The applicant has been working as a Constable in Delhi Police since 1989. On 24.5.1993 while the applicant along with Constable Om Narain No.614/NE was on patrol duty in the Illaka near 'B' Block, Yamuna Nagar, ^{they} found one Jagan Singh and his cousin Kartar Singh standing near the bank in a suspicious manner. According to applicant, on seeing the police Jagan Singh tried to hide himself and when the applicant and

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Constable Om Narain went towards him, the said Jagan Singh started running away. The applicant threw his cane aiming at Jagan Singh's legs. Jagan Singh was hit between his legs and fell down. Jagan Singh could not give a satisfactory account of himself whereupon he was taken to the Police Station, was medically examined, arrested and produced before the S.D.M. under Section 109 Cr.P.C. The S.D.M. did not rely on the prosecution case and let Jagan Singh off. A preliminary enquiry was conducted against the applicant and Constable Om Narain. They were ordered to be dealt with departmentally and a summary of allegations dated 16.7.1993 was served upon the applicant. Applicant was also placed under suspension w.e.f. 25.5.1993. According to the applicant, the prosecution witnesses in the enquiry did not totally support the allegations levelled against the applicant. However, the charge was framed against the applicant by the enquiry officer on 8.11.1993. According to the applicant, the findings in the enquiry report are arbitrary and not based on any evidence on record. The applicant made a representation dated 6.12.1993 against the findings of the enquiry officer. The disciplinary authority passed the impugned orders on 21.12.1993 forfeiting two years' approved service of the applicant for a period of two years permanently entailing reduction in his pay from Rs.1030/- p.m. to Rs.990/- p.m. It was also ordered that the applicant would not earn any increment of pay during the period of reduction and on the expiry of the said period the reduction would have

the effect of postponing his future increment of pay. Although Constable Om Narain was also charged similarly as the applicant, he was exonerated of the charge. It was further ordered that the suspension period from 25.5.1993 to 24.8.1993 be treated as period not spent on duty. The impugned order of punishment dated 21.12.1993 was upheld in appeal by the appellate authority vide order dated 7.3.1994. The applicant has alleged that the appellate authority did not apply its mind. The applicant has contended that there is no evidence on record to prove that the applicant had arrested the complainant with any mala fide intention and that it is illegal to treat the suspension period as period not spent on duty being against the provisions of Section 27(a)(b) of the Delhi Police (Punishment & Appeal) Rules, 1980 (for short, the 1980 Rules).

2. The applicant has sought quashing of the enquiry report dated 25.11.1991; the order of suspension dated 25.5.1993; the order of punishment dated 21.12.1993; and the appellate order dated 7.3.1994.

3. In the counter the respondents have stated that the story advanced by the applicant regarding arrest of Jagan Singh was disbelieved by the S.D.M. In the departmental enquiry against both the Constables, six prosecution witnesses and three defence witnesses were examined and the applicant was held guilty of the charge while the other Constable Om

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Narain was exonerated. A copy of the findings was served upon the applicant. He submitted his reply in response to the said findings. The disciplinary authority carefully went through the findings of the enquiry officer, the other record available on the file and the reply submitted by the applicant who was also heard in orderly room whereafter the impugned orders dated 21.12.1993 were passed. He made an appeal to the Additional Commissioner of Police, New Delhi Range against the abovesaid order which was considered at length and rejected by order dated 7.3.1994. The applicant further filed a mercy petition to the Commissioner of Police which too was rejected vide an order dated 24.5.1994. The respondents have averred that the applicant had beaten up Jagan Singh without any cogent reason. The impugned orders have been passed after considering the evidence of six prosecution and three defence witnesses. The appellate authority has passed a detailed order also mentioning that on checking from the SHO, Bhajanpura it was found that Jagan Singh had no record in the Police Station. The applicant should have checked up records and made enquiries before taking action against Jagan Singh under Section 109 Cr.P.C. In the departmental enquiry as well as in the appeal the applicant was clearly found to be at fault. However, the other Constable Om Narain who accompanied the applicant while Jagan Singh was accosted and beaten up, was let off as nothing could be proved from the prosecution evidence adduced against him. The respondents have stated that in view of the gravity of

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the proven misconduct of the applicant, the impugned orders cannot be faulted with. The applicant has filed a rejoinder as well.

4. We have gone through the record in the file carefully. The applicant has himself in the O.A. admitted that on enquiry it had been revealed to him that Jagan Singh had an account in the bank. The appellate authority has pointed out that if the applicant had made a little more effort to verify the police records, he would have discovered that there was no record against Jagan Singh. In spite of the shoddy enquiry against Jagan Singh he was beaten up and proceeded against under Section 109 Cr.P.C. Obviously the prosecution story against Jagan Singh was not believed and Jagan Singh was let off. In the enquiry, six prosecution witnesses and three defence witnesses were examined against the applicant and the accompanying Constable Om Narain. Whereas the charge against the applicant was substantiated on the basis of the evidence in the enquiry, it could not be established against Constable Om Narain. Thus, whereas Constable Om Narain was exonerated, the applicant was held guilty of the charge. Both the disciplinary authority and the appellate authority have passed detailed reasoned orders and the findings of the enquiry officer, the disciplinary authority and the appellate authority cannot be faulted with. The objection of the applicant that the suspension order and the suspension period being treated as not spent on duty is against the provisions of Section 27(a) (b)

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of the 1980 Rules is also not established. As a matter of fact, under these Rules, when it appears likely that the charge framed will, if proved, render a police officer liable to dismissal or removal from service, or when the nature of accusation against him is such that his remaining on duty is prejudicial to the public interest or detrimental to investigation into the accusations, a police officer whose conduct is under departmental enquiry shall ordinarily be placed under suspension. In the present case, these provisions have been duly followed and not violated.

5. In this case, penalty of forfeiture of two years' approved service for a period of two years permanently entailing reduction in pay has been imposed upon the applicant. It has also been ordered that the applicant would not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increment of pay. A question can arise whether the imposition of this kind of penalty is in accordance with law. This question has been examined by a Full Bench of this Tribunal in its order dated 18.5.1999 in O.A. No.2225/1993, ASI Chander Pal vs. Delhi Administration & Anr. The answer to this question before the Full Bench is reproduced as follows :

"The penalty of forfeiture of 'X' years of 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

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the reduction would have the effect of postponing the future increments, is in accordance with law.

6. In ordersheet dated 17.8.1999 it has been recorded that the learned counsel for parties submitted that the aforesaid Full Bench decision has been challenged in a CWP before the High Court. However, so far as we are concerned, a Full Bench decision of this Tribunal is binding on us. Thus, the abovestated controversy is deemed to have been resolved vide the aforesaid order and the penalty is considered to be in accordance with law.

7. In view of the above discussion and reasons, we do not find merit in the present O.A. which is accordingly dismissed. There shall be no order as to costs.


(Ashok Agarwal)
Chairman


(V. K. Majotra) 6/3/2000
Member (A)

/as/