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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 1395/89.

Date of decision. 3-6-94.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Om Prakash (164-E-657-L),
s/o Shri Sedan Singh,
r/o Barrack No. 9,
Old Police Line,
DELHI.

... Applicant

(By Advocate Shri Shyam Babu)

versus

1. Delhi Administration,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Additional Commissioner of
Police, New Delhi Range,
Police Headquarters,
I.P. Estate,
New Delhi.

3. Deputy Commissioner of Police,
East District,
Delhi.

... Respondents

(By Shri Lal Bihari, ASI,
Departmental Representative)

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7 Hon'ble Smt. Lakshmi Swaminathan, Member (J) 7

The applicant, who was working as Head
Constable in Old Police Line, Delhi, has filed
this application challenging the enquiry report
dated 28.1.1988 (Annexure 'G'), the disciplinary
authority's order dated 12.7.1988 (Annexure 'J')
by which the applicant's 3 years approved service

has been forfeited permanently entailing reduction in his pay and the Appellate Order dated 5.4.1989 (Annexure 'L') by which his appeal was rejected.

2. The brief facts of the case are that during September, 1985, while the applicant was posted in the Office of Commissioner of Police (Reserve), it was stated as under :-

" It has been alleged that an information was received from SHO, Police Station Khurja, District Bulandshahr, U.P., that a raid had been conducted in the house of one Mahabir Singh son of Shri Jagram Singh, resident of 513, New Shivpuri, Khurja, a teacher in J.A.S. Inter College and that the search has resulted in the recovery of tear gas shell, one tear gas hand grenade and 2 live 315 bore cartridges. A case F.I.R. 417 dated 16.9.85 under sections 4/5 Explosive Act and 25/24/59 Arms Act, P.S. Khurja City, was registered. During interrogation by the Khurja Police, Shri Mahabir Singh disclosed that the above incriminating articles had been brought by his nephew, H.C. Om Prakash, No. 164-E of Delhi Police and his son, Constable

Ajit Kumar No. 1622/Security-300 E. In the course of investigation, Head Constable Om Prakash, No. 164/E stated that during the November riots, he was posted in C.P.'s reserve and attached to DCP/South. A number of rounds of tear gas shells were fired to quell the riot. Out of these rounds, he kept some tear gas shells for making good any shortage occurring in future. In order to conceal this fact, the Head Constable took these tear gas to his uncle's house, Shri Mahabir Singh in Khurja and kept the same in his house".

enquiry
S.H.O., Seemapur was appointed to conduct a departmental/ Constable against the applicant and Shri Ajit Kumar, who was also charged alongwith the applicant. The Enquiry Officer served on the applicant a memo. of enquiry alongwith the summary of allegations and memo. of evidence. The Enquiry Officer examined a number of prosecution witnesses and thereafter submitted the enquiry report. It was alleged in the charge that while the applicant was posted in Commissioner of Police (Reserve) and attached to D.C.P. South during 1984 riots, following the assassination of the Prime Minister, Smt. Indira Gandhi, a number of rounds of tear gas shells were fired to quell the riots.

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Out of these rounds, the applicant kept some of the tear gas shells for making good any shortage occurring in future. It was alleged that he had taken and kept the tear gas shells at his uncle's house, Shri Mahabir Singh in Khurja. According to the applicant, the nature of the charges against the applicant and his cousin, Constable Ajit Kumar, who was the son of Shri Mahabir Kumar, were the same and they were interconnected with each other. The applicant had submitted his written statement in defence on 8.3.1987.

4. The Enquiry Officer submitted his findings to the disciplinary authority vide his report dated 28.1.1988. The applicant has challenged the Enquiry Officer's report as being arbitrary as he had no reason at all to arrive at the findings that the charges against both the defaulters stand proved.

5. The second contention of the learned counsel for the applicant is that the punishment order dated 12.7.1988 is biased & discriminatory. He submits that the disciplinary authority has observed that while the reply submitted by Constable Ajit Kumar was satisfactory and ^{him 18} he was exonerated ~~of~~ ^{him 18} from the charge, the explanation given by the applicant himself was not accepted. He was on the contrary punished with forfeiture of 3 years approved

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service entailing reduction in his pay from Rs. 1100/- to Rs. 1025/- from the date of issue of the order.

6. The third contention on behalf of the applicant is that under Section 21 of the Delhi Police Act, 1978 read with Rule 8(d)(i)(ii) of the Delhi Police (Punishment and Appeal) Rules, 1980 only one punishment can be inflicted, whereas, in fact, two punishments have been inflicted on the applicant i.e. (i) forfeiture of 3 years approved service and (ii) reduction in pay. He has relied on the judgment of this Tribunal in Mangal Ram v. UOI [O.A.No. 1809/91] dated 22.7.1993.

7. The fourth contention of the applicant's counsel is that relying on the judgment of Anil Kumar v. Presiding Officer & Others [AIR 1985 SC 1121], the Enquiry Officer's report is bad in law as he failed to show the reasons for his conclusion that the charge was proved against the applicant. He further submits that one of the witnesses appearing before the enquiry officer namely P.W.IV, Shri Vijay Giri, had not been cross-examined by the Presenting Officer according to the rules.

8. We have carefully considered the records of the case and the arguments advanced by the learned counsel of the applicant. In this case, the Enquiry Officer's report placed at Annexure 'G' gives reasons for the conclusions arrived at. Hence, the judgment in Anil Kumar's

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case (supra) relied upon the applicant will not be of much assistance to him on the facts of this case.

9. We find that in fact both the enquiry officer and the disciplinary authority have given sufficient reasons for the conclusions they have arrived at. We find that this is not a case where there is no evidence on which it can be stated that the decision arrived at by the competent authority is arbitrary or perverse. It is well settled that it is not for this Tribunal to sit in appeal on the decision arrived at by the competent authority provided they are based on some evidence and are not arbitrary or perverse. There appears to be no justification for any interference in this matter on this ground.

10. Similarly, with regard to the submission made by the learned counsel that the punishment order is arbitrary and biased because the other co-accused constable Ajit Kumar, who was exonerated from the allegation levelled against him while the applicant himself was punished is also without any basis. As mentioned above, the disciplinary authority has come to the conclusion after examining the records and evidence placed before him, and accepting the explanation given by the other accused as satisfactory whereas

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relying mainly on the deposition made by one of the witnesses viz. P.W. 3 that the applicant had admitted that the tear gas shell was kept by the defaulter in the house of Shri Mahabir Singh he had found the charge proved against the applicant. In the circumstances of the case, the impugned order of punishment is not arbitrary or unjustified. The applicant has also failed to establish any bias against the Respondents and mere allegation of bias is not sufficient.

11. With reference to the third contention of the application, it is necessary to refer to Section 21 of the Delhi Police Act, 1978 and Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980 made thereunder. Section 21 is an enabling provision which gives the powers of punishment and lists the authorities who can inflict the punishments on the delinquent officers. Clauses (d) & (e) of sub-section (1) of this Section provides for imposing of the punishment of 'forfeiture of approved service' and 'reduction in pay'. Rule 8 lays down the principle of inflicting penalties which includes 'withholding of increment' (clause(c)) and clause (d) of sub-section 2 provides for 'forfeiture of approved service' and provides as follows :-

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" 8(2)(d) Forfeiture 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)."

12. The decision in Mange Ram's case (supra) is distinguishable as in that case two punishments, namely one order of forfeiture of entire approved service rendered as A.S.I. permanently reducing his pay in the time scale for 3 years and a further order of deferment of increment of pay had been approved for the same offence which the Tribunal held was bad in law. This is not the position in the present case. In this case, the impugned order dated 12.7.1988 passed by the disciplinary authority and later confirmed by the appellate order dated 5.4.1989 has imposed on the applicant the punishment of forfeiture of 3 years approved service permanently entailing reduction in his pay from Rs. 1100/- to Rs. 1025/-. Having regard to the provisions of Rule 8(2)(d)(ii), we do not find any infirmity in the punishment order. The reduction in pay flows from the punishment of forfeiture of approved service

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and is not a further punishment as contended by the learned counsel for the applicant. In this view of the matter, this plea is rejected. We do not also find any merit in the other contentions of the learned counsel for the applicant referred to above.

13. In the result, the application fails and is, therefore, dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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(S. R. Andolige)
Member (A)