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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1357/1988.

Date of decision: October 21, 1993.

Shri Khazan Singh ... Petitioner.

Vs.

Delhi Administration & Ors. ... Respondents.

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. S.R. ADIGE, MEMBER (A).

For the petitioner ... Shri Shankar Raju, counsel.

For the respondents ... Shri Ashok Kashyap, counsel

JUDGMENT (ORAL)

(BY: Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Khazan Singh was a Police Constable (Driver) working in the Delhi Police. A disciplinary enquiry was initiated against him on the charge that on 19.11.1984, instead of reporting to duty from 7 A.M. to 6 P.M., he reported 11 hours and 5 minutes late and thus was guilty of unauthorised absence. There is also an allegation that he was a habitual absentee as can be seen from his service records from 1970 to 1984. The petitioner denied the charges levelled against him and, therefore, a regular enquiry was held by an Enquiry Officer appointed for that purpose. He held the charges levelled against the petitioner duly proved which findings were accepted by the Disciplinary Authority, Deputy Commissioner of Police, Special Branch, Delhi. He inflicted by his order dated 21.5.1985 (Annexure A-9) the punishment of forfeiture of 5 years approved service and reducing the pay of the

petitioner from Rs 342/- to Rs 308/- per month. On an appeal, the Additional Commissioner of Police, CID: Crime, Delhi by his order dated 26.2.1986 (Annexure A-11) while affirming the order of the Disciplinary Authority holding the petitioner guilty, reduced the punishment of forfeiture from 5 years approved service to forfeiture of 2 years approved service. A further revision was rejected as also the memorial to the Lt. Governor, Delhi. It is in this background that the petitioner has approached the Tribunal with this Application filed on 21.7.1988.

2. It is urged by Shri Shankar Raju, learned counsel for the petitioner that there has been a denial of reasonable opportunity to the petitioner inasmuch as the original document described as 'chitha' (duty roster) of the 19th November, 1984 was not furnished to him. The petitioner's case is that he was assigned the timings earlier from 6 PM to 7 AM which was not changed for 19th November, 1984 also. The chitha was subsequently changed without bringing it to the notice of the petitioner with a view to oblige another Constable, Ajit Singh. It was urged that if the original 'chitha' was made available to the petitioner, it would have been possible for him to make out a case that there has been a subsequent change of timings which was not brought to the notice of the petitioner. Firstly, it is necessary to point out that there is nothing to show on the record that any such request was made before conclusion of the evidence by the Enquiry Officer. Besides, it is necessary to point out that the material on record

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indicates that a photo copy of the 'chitha' was furnished to the petitioner. That is obvious from the manner in which the petitioner has cross examined Shri Nirmal Singh who has prepared and signed the 'chitha'. Specific questions have been directed to this witness about the alleged changes and interpolation in the 'chitha'. This, the petitioner would not have been able to do had he not the clear and full picture how the original 'chitha' looks like. In this background, it is not possible to accede to the contention that there has been unreasonable denial of reasonable opportunity to the petitioner by not producing the original 'chitha' during the enquiry.

3. The question as to whether the timings originally entered in the 'chitha' were subsequently changed as alleged by the petitioner was put in issue, the witness was cross-examined at length in this behalf ? The Enquiry Officer took into consideration the evidence produced and believed the version of Shri Nirmal Singh which is to the effect that there was no change or interpolation of the entries in the 'chitha' once they were finalised and notified. The name of Shri Khazan Singh is shown twice. In the earlier entry the time schedule given for him on 19.11.1984 is 7 AM to 6 PM. After entries of couple of other persons, it appears that another entry was made again in the name of Shri Khazan Singh which has been scored and the name of Shri Ajit Singh has been entered. This gives scope for suspicion that there has been interpolation at a subsequent stage of the name of Shri Khazan Singh assigning him the ^W timings from 7 AM to 6 PM. If there was a subsequent entry

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as alleged, the photo copy would have certainly indicated that there was no enough space as is found in respect of other entries for the addition of the entry of Shri Khazan Singh's name. A bare perusal of the 'chitha' indicated that the name of Shri Khazan Singh was assigned the timing from 7 AM to 6 PM was not an interpolation. Besides, it is necessary to say that this is a question of facts. The Enquiry Officer has recorded a finding against the petitioner which has been accepted by the Disciplinary Authority and the Appellate Authority. It is not our province to interfere with the findings of facts recorded in disciplinary proceedings. The findings recorded, therefore, are not liable for interference.

4. Another argument of Shri Shankar Raju is about the interpretation of the appellate order of the Additional Commissioner of Police who has reduced the penalty of forfeiture of 5 years approved service to 2 years approved service. Whereas the Disciplinary Authority in his order has in addition to forfeiture of 5 years approved service further directed reduction of pay from Rs .342/- to Rs .308/- per month, there is no specific direction in the appellate order regarding reducing the pay of the petitioner. There is, however, a significant statement in the appellate order which shows that the Appellate Authority was inclined to take a lenient view and interfered with the quantum of punishment taking into consideration that the petitioner was a poor constable and has to suffer the monetary loss of a substantial nature by reduction of his pay from

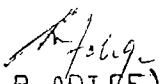
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Rs .342/- to Rs .308/- per month. This has been described as harsh by the Appellate Authority . This certainly indicates that the Appellate Authority was inclined to set aside the direction regarding reducing the petitioner's pay from Rs .342/- to Rs .308/- per month. We are inclined to take the view that the Appellate Authority substituted its own order regarding imposition of penalty for the order made by the Disciplinary Authority. If the order read, is so/what we see in the Appellate order is the imposition of penalty of forfeiture of 2 years approved service and nothing more. We have, therefore, no hesitation in holding that the clear effect of the order of the Appellate Authority is to set aside the direction of the Disciplinary Authority regarding reduction of the pay of the petitioner from Rs .342/- to Rs .308/- per month. The learned counsel for the respondents submitted that he does not have instructions to say as to how the authorities have construed the orders. He submitted that the authority ^{may} have understood the orders in the manner in which we have interpreted. If that is so, the petitioner would have been paid the amount due to him without reduction of his pay. In this background, it is enough to dispose of this Application, with a direction that the monetary benefits due to the petitioner on the basis that the penalty of reduction of pay from Rs .342/- to Rs .308/- per month has been set aside by the Appellate Authority, be paid. If the amount due to the petitioner has already been paid, the question of further payment does not arise.

(No)

If the petitioner has not been paid, the same shall be paid now within a period of four months on the receipt of this judgment. No costs.




(S.R. ADIGE)
MEMBER (A)

(V.S. MALIMATH)
CHAIRMAN

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