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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 1549/88

New Delhi this the 1st day of December, 1993.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member(A).

Chothi Lal
S/o Shri Phool Singh,
Head Constable No.7162/DAP,
Police Training School,
Jharoda Kalan,
Delhi.

... Petitioner.

By Advocate Shri Ashish Kalia.

Versus

1. Commissioner of Police,
Police Headquarters,
Indraprastha Estate,
New Delhi.

2. Principal,
Police Training School,
Jharoda Kalan,
Delhi.

... Respondents.

By Advocate Mrs Meera Chhiber.

O R D E R

Shri Justice V.S. Malimath

The petitioner, Shri Chothi Lal, was the Head Constable on the date of incident, namely, 26.7.1986. On the allegation that he committed certain misconduct on that day, a disciplinary inquiry was initiated against him.

2. The two principal charges are that on that date there was rioting near Tilak Nagar area which resulted in riotous behaviour including stones throwing by hooligans and that the petitioner who was on duty at that point of time did not take effective and proper steps for dealing with the situation. The allegation, therefore, is one of dereliction of duties. The other charge is that when he was questioned in this behalf by Sub Inspector Rajinder Singh, the petitioner

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behaved insolently questioning his authority and when Shri Rajinder Singh, SI said that he is the reader to the DIG, the petitioner is alleged to have stated that he has seen many DIGs. A regular inquiry was held by the Inquiry Officer appointed for the purpose. The Inquiry Officer, however, gave a report holding that the charges levelled against the petitioner have not been proved. The disciplinary authority, however, disagreed with the findings of the Inquiry Officer and on assessment of the evidence recorded findings to the effect that both the charges are duly proved. He passed an order on 8.6.1987 holding the petitioner guilty of both the charges and imposing the penalty of forfeiture of two years approved service entailing deferment of his two increments permanently. Appeal against the said order was dismissed on 13.1.1988 and so was the revision petition on 21.5.1988. The revisional authority, however, felt that before the disciplinary authority directed that the period of suspension should not be treated as on duty, the petitioner should have been given a show cause notice. He, therefore, directed the show cause notice being issued in that behalf. It is in pursuance of that order that the show cause notice was issued on 17.6.1988 and after considering the show cause notice, the earlier order was confirmed.

3. Shri Kalia, learned counsel for the petitioner, firstly contended that the petitioner was not afforded an opportunity of showing cause before he held the petitioner guilty of both the charges disagreeing with the Inquiry Officer's report who had exonerated him. The petitioner, however, has not taken up any such contention in the petition. The learned counsel for the petitioner was not in a position to point out any ground raised in this behalf.

Whether an opportunity of showing cause was given or not is a question of fact. If there was any truth in the case of the petitioner, he should have raised a specific contention in that behalf and given an opportunity to the respondents of rebutting the allegation regarding failure to give an opportunity to show cause. As no such contention has been raised in the petition, we would not be justified in permitting the learned counsel for the petitioner to advance such contention.

4. It was next urged by Shri Kalia, learned counsel for the petitioner, that there is nothing to show that there was any stone throwing incident on that date which resulted in instructions being issued by Shri Rajinder Singh, SI and the defiance and disrespectful observations attributed to the petitioner. On a perusal of the Inquiry Officer's report, we find that there is evidence to show that communal riots took place in the area on that date which inter alia involved stone pelting. It was urged by Shri Kalia that in the police records, there is no mention of such an incident. That does not mean that this is a case of no evidence. As the witnesses have stated that there was communal riots in the area as also about stone pelting, it is not possible to take the view that the finding in this behalf is of no evidence. The question as to whether the entry in the police record should ^{be} believed or the oral evidence is not a matter which is within our province. As this is not a case of no evidence or the findings being perverse, it is not open to us to interfere with the findings of fact that the first charge is duly proved.

5. It was next urged by the learned counsel for the petitioner that this is a case of double jeopardy in the sense for the single misconduct the petitioner has been awarded two punishments, one for forfeiture of two years approved service and another of deprivation of two increments. There is

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no substance in this contention as there is a specific rule in Rule 8(D) of the Delhi Police (Punishment and Appeal) Rules, 1980 which in express terms contemplates the punishment of forfeiture of approved service permanently entailing the deprivation of the benefit of increments. Hence, it is not possible to take the view that any case of double jeopardy has been made out in this case.

6. It was lastly urged that the punishment imposed is manifestly unreasonable and out of proportion to the gravity of the misconduct committed. The Supreme Court has reiterated again and again that it is for the disciplinary authority to assess the appropriate punishment to be awarded and the courts and Tribunals should not normally interfere with the exercise of such discretion. Bearing in mind the fact that the petitioner is a responsible officer in a disciplined police force, it is not possible to take the view that for dereliction of duty and his disrespectful behaviour with the superior officers the punishment imposed is excessive or unreasonable.

7. For the reasons stated above, this petition fails and is dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

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