

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.8595 of 1993(O&M)
Date of Decision : 13.03.2015**

Sub Inspector Mukhtar Singh

..... Petitioner

versus

Directorate General, CRPF and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Hari Om Sharma, Advocate
for the petitioner.

Ms. Anita Balyan, Senior Panel Counsel
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the punishment orders.

The petitioner was working as Sub Inspector in the CRPF and was at that time posted at Islamia College, Srinagar. As per the allegations, the procession was coming towards the camp on 21.05.1990 and the petitioner failed to exercise proper control over the men which resulted in many casualties and instead of restraining them he ordered them to open fire. Originally the punishing authority imposed the punishment of stoppage of two increments with cumulative effect. The petitioner filed an appeal and the appellate authority, after giving him notice, enhanced the punishment to the effect that his pay was reduced to the lowest stage in the

time scale of pay i.e. Rs.1400/- p.m. for a period of two years. It was further directed that he would not regain his original seniority in the rank on completion of reduction period and will earn his increment afresh after completion of 12 months from the date of completion of reduction period. It was further directed that his suspension from 11.06.1990 to 27.10.1991 will be treated as such and he will not claim any more pay and allowances than what he had already drawn as subsistence allowance during the said period.

Learned counsel for the petitioner states that as per the inquiry proceedings eight prosecution witnesses had appeared and all of them had unequivocally stated that on that date a volatile anti national procession came towards the camp in violation of curfew orders, and first there was heavy brick-batting which was followed by AK-47 & single shot fire. Admittedly on these factual aspects there was no cross examination-in-chief and some of the prosecution witnesses also deposed that they had been injured by stones and brick also. It is the contention of the learned counsel that at that time the petitioner was concerned primarily with the safety of the members of the CRPF and the security of four militants who were in custody at that time. Considering the volatility of the situation and the brutality of the attack there was no option but to save the camp and it was for that purpose the firing was resorted to.

Learned senior panel counsel for the respondents has sought to argue that these facts have been considered and it is not the province of the court to interfere with disciplinary proceedings unless there is a procedural

lapse.

Learned counsel for the petitioner has relied upon the judgment passed by a Division Bench of the Delhi High Court in ***K.G. Gopi and others vs. UOI and others, passed in WP(C) NO.2759 of 1994, decided on 01.02.2006.*** In that case also a convoy of CRPF was attacked and on retaliatory fire from the force some persons had died (like in the present case). Similarly in that case punishment orders were imposed for the same charge i.e. failure to exercise proper control and the Bench held as follows:-

“.....We have looked into the complete record including the pleadings in order to appreciate if this is a case for interference in the writ jurisdiction. Infliction of punishment is normally the domain of the disciplinary authority or its higher authorities in the armed forces or in para military forces. The Courts ordinarily would not interfere unless circumstances so warrant the interference by way of judicial review as imperative. This is one such case where the conscience of the Court has been shocked. The petitioners who were soldiers in the CRPF showed exemplary courage as is evident from the report of the enquiry officer who had occasion to examine the witnesses who had actually witnessed the militants attack and retaliation by the petitioners. As noticed, the militants had laid ambush on a large scale. There was a bomb attack followed by firing from AK 47 rifles by the militants. The petitioners retorted swiftly and if the petitioners had not retorted at the appropriate time it could have turned into a ugly and bloody situation. It is not a case where the petitioners were found guilty of dereliction of duty. It is a case where according to the respondent they should have exercised restraint and should not have resorted to exercise firing. A bare reading of the evidence of the departmental enquiry where number of witnesses were

examined leads us to an inescapable conclusion that far from being punished, the petitioners deserve to be rewarded. The petitioners, who without caring for their lives, managed to thwart the militant's attack which attack was quite severe in nature. Many lives could have been lost if the militants had not been dealt with in the manner they were dealt with by the petitioners. This Court after having appraised the evidence of the witnesses finds that the militants who suddenly started firing from their hidden positions not only with bombs but with A.K. 47 rifles, were rightly dealt with by the petitioners.....”

After holding the same, the Bench allowed the writ petition. In my considered opinion, the facts of the present case are completely covered by that decision. In the present case also, it is not known what would have been the situation if the force had not fired. There is a possibility that the processionists would have entered the campus, caused violence to the members of the force and probably even have sped away with the terrorist in custody.

Resultantly, the petition is allowed. The impugned/punishment orders are set aside and the respondents are directed to grant all consequential benefits to the petitioner within a period of 3 months from the date of receipt of a certified copy of this order.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 13, 2015

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**(AJAY TEWARI)
JUDGE**