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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4520/2013**

COOK HARISH SINGH

..... Petitioner

Through: Mr.Parminder Singh Bhullar with
Mr.Rajeev K.Gupta and Mr.Abhishek
Kishore, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Rajesh Gogna, CGSC with
Mr.Kamaldeep and Mr.P.Upendra
Sai, Advocates along with
Insp.Mohd.Isham, CISF.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

28.08.2019

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1. The Petitioner, who was Ex-Constable/Cook with the Central Industrial Security Force ('CISF'), Panipat is aggrieved by an order dated 15th February 2012 passed by Group Commandant, CISF, Group Headquarters, Chandigarh compulsorily retiring the Petitioner from service as well as the order dated 12th September 2012 passed by the Inspector General (North) CISF (Appellate Authority) confirming the above order.

2. The Petitioner was appointed as Constable/Cook in the CISF in the year

1990. While working in the CISF Unit IOC Panipat on 13th September 2011 it is stated that at about 8.45 am in the Unit Mess the Petitioner quarrelled with Constable/GD Gurbhej Singh who was a Mess Helper by attacking him with a Moosly on his head and for causing a cut on his chest with his teeth thus causing serious injuries to Gurbhej Singh. Following the said incident a memorandum of charge was drawn up for the purpose of holding inquiry proceedings for a major penalty.

3. While Charge No.1 was concerned the above attack by the Petitioner on Gurbhej Singh on 13th September 2011 Charge No.2 stated that the Petitioner had earlier been awarded minor punishment on four different occasions and that the bad service record of the Petitioner showed 'indiscipline, negligence towards duty, misconduct'. The defence of the Petitioner in the enquiry was not that the incident did not occur but that it was Gurbhej Singh who was the aggressor. According to the Petitioner it was Gurbhej Singh who verbally abused the Petitioner about insufficient breakfast and he supposed to have slapped the Petitioner prior to the Petitioner attacking. In other words, the altercation itself was not denied by the Petitioner. The only question, therefore, was whether the Petitioner had reacted in the manner disproportionate to the provocation.

4. According to the Petitioner he too suffered a collar bone fracture for which he went to hospital at Panipat for its treatment. The Enquiry Officer, however, did not accept the above explanation. It was noted that the Petitioner had hit Const. Gurbhej Singh with an iron rod on the head and despite Const. Gurbhej Singh having a Pagri he received injuries which

required stitches.

5. The Enquiry Officer then dealt with the second article of charge and came to the conclusion that those charges were also 'true and correct' as the Petitioner had admitted to the EO that punishments had been imposed.

6. This Court has heard the submissions of learned counsel for the parties. As far as charge No.1 is concerned, it appears to the Court that the factum of altercations having taken place as result of which injuries were inflicted by the Petitioner on Const. Gurbhej Singh thus stand established. However, there appears to be some merit in the contention of the learned counsel for the Petitioner that in the scuffle the Petitioner was also injured. Not enough attention appears to have been paid to the medical records which appear to indicate that Petitioner received treatment for injury to his 'left cervical i.e. his collar bone'. Counsel for the Petitioner states that he has the X-rays in his possession to show that he had indeed suffered a fracture of the left collar bone.

7. As far as Charge No.2 is concerned the four previous instances cited by the Respondents did not pertain to any assault by the Petitioner of anyone. There were charges pertaining to leave in May 1992 for 16 days; non-submission of the trefoil return journey copy which occurred in June 1994; not proceeding to election duty in August 1999 and not proceeding to internal security duty at Chandigarh in July 1999. Also the punishments awarded ranged from stoppage of increments to censure, withholding of one increment and fine of 5 days pay. By no means could it be said that the

above 4 past instances involved any grave charges comparable with the present Charge No.1. Further those appear to be incidents more than 10 years prior to the incident in question. Consequently, the Court is not satisfied that Charge No.2 was warranted at all and that the earlier 4 instances cited by the Respondents ought not to have formed the basis of imposing a severe punishment on the Petitioner for the guilt in relation to Charge No.1.

8. In these circumstances while not interfering with the report of the Enquiry Officer finding the Petitioner guilty of Charge No.1, the Court is of the view that the punishment of compulsory retirement awarded to the Petitioner for the said charge appears, in the circumstances explained hereinbefore, to be disproportionate and excessive. Accordingly the Court remands the matter to the Appellate Authority once again for considering whether the punishment for Charge No.1 should be reviewed keeping in view the fact that the Petitioner was also perhaps injured in the scuffle.

9. It may also be noted that Const. Gurbhej Singh was also proceeded against disciplinarily and was awarded minor punishment for the said incident.

10. A fresh decision as to the punishment to be awarded to the Petitioner be taken by the Appellate Authority within 4 weeks from the date of receipt of the certified copy of this order and be communicated to the Petitioner within 10 days thereafter. If the Petitioner is aggrieved by such decision it will be open to the Petitioner to seek proper remedies in accordance with law.

11. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 28, 2019/ tr