
(1971) 08 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Petition No. 1087 of 1970

Chamanlal Chabra

APPELLANT

Vs

Lt. Governor, Delhi and Others

RESPONDENT

Date of Decision : 11-08-1971

Acts Referred:

Citation : (1972) ILR Delhi 883

Hon'ble Judges : Jagjit Singh, J

Bench : Single Bench

Advocate : F. Anthony, K.B. Rohtagi and R.M. Mehta, for the Appellant;

Judgement

Jagjit Singh, J.

(1) The petitioner in this case, Shri Chaman Lal Chhabra, an officiating Deputy Superintendent of Police, was on the night between the 31st December 1967 and the 1st January 1968 in-charge of the Police Station Parliament Street, New Delhi. On that night the free flow of traffic was obstructed, at certain places in the Connaught Place area, by groups of merry-making persons. Not only some cars and other vehicles were stopped and damaged but some persons even misbehaved towards ladies, and there were a few incidents of stabbing and snatching away of ornaments. The authorities naturally took a serious view of these acts of rowdyism. As it was considered that adequate patrolling was not done by the petitioner and the situation was allowed to go out of control, the petitioner was placed under suspension and disciplinary proceedings were started against him.

(2) The petitioner is a Police officer of long standing and had even rendered military service for about seven years before joining as Sub inspector in the Delhi Police on October 15, 1948. He was confirmed as a Sub-Inspector in the year 1952 and was promoted to the rank of officiating Inspector with effect from May .19, 1956. He was confirmed in the rank of Inspector in the year 1962. With effect from June 12, 1963 he was appointed by a Deputy Secretary to the

Government, Ministry of Home Affairs, to officiate against a duty post of the Delhi and Himachal Pradesh Police Service.

(3) It also appears that the record of service of the petitioner was unblemished. Admittedly according to the military discharge certificate his military service was classified as "superior" and the performance of his duties as a police Officer was described to be "satisfactory".

(4) Immediately after the incidents of the night between the 31st December 1967 and the 1st Jan. 1968 came to be known the District Magistrate, Delhi, ordered Shri H. L. Sikka, Sub-Divisional Magistrate, to enquire into the allegation that the local police had not taken necessary action to prevent acts of lawlessness or to arrest persons indulging in unlawful activities. Before any enquiry could be held by the Sub-Divisional Magistrate a report was submitted to the Lt.-Governor, Delhi, by the Deputy Inspector General of Police (Range). On that report the Lt.-Governor made the following orders on January 2, 1968 :-

"I am grateful for D.I.G's prompt enquiry and report, The facts remain that (a) The subordinate police took the whole affair too lightly and did not take effective action to prevent the untoward incidents. In fact they do not appear to have made serious attempts to arrest the miscreants. (b) that effective leadership was completely lacking; (c) that adequate patrolling was not done by the D. S. P. (d) that the situation was allowed to go out of hand and disgraceful scenes were allowed to be enacted in the most fashionable centre of the city with the police watching as spectators and (e) that no attempt was made to inform the D. I. G.. D.C. or the I.G. They, like me, learnt about the incidents from the newspapers. I have no doubt that those responsible need a shaking up. A Magisterial enquiry has already been instituted. Pending that the Deputy S.P. Sh. Chhabra is placed under suspension forthwith. The appropriate authority will take similar action against the subordinate ranks. sd/- A. N. Jha 2.1.68. The magisterial enquiry will be conducted by an A. D. M. sd/- A. N. Jha 2.1.68. On January 3, 1968 the Chief Secretary, Delhi Administration, passed an order by which the petitioner was placed under suspension. It was mentioned in that order that disciplinary proceedings against Shri Chhabra were contemplated and that the order was being made under sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which have been referred to hereinafter for facility of reference as "the Classification, Control and Appeal Rules".

(5) As ordered by the Lt.-Governor a preliminary enquiry was held by Shri R. K. Anand, Additional District Magistrate, South District. Shri Anand took the view that it was difficult to understand as to why the petitioner did not decide to disperse the crowd, especially when the situation was bad. He also remarked that "the incidents of hooliganism and molestation of women" could have been avoided "if policemen had displayed a sense of duty and firmness in either apprehending the hooligans or chasing them away". Thereafter the petitioner was served with three articles of charge, through a Memorandum dated July 10,

1968. The said Memorandum was issued by Shri S. C. Verma, then Chief Secretary to Delhi Administration. Shri Chhabra was informed that it was proposed to hold an enquiry against him, under rule 14 of the Classification, Control and Appeal Rules in respect of the articles of charge. He was required to submit his written-statement of defense and was told that an enquiry will be held in respect of those articles of charge which were not admitted. The articles of charge referred to in the Memorandum were as under :- Article I

"That the said Shri C. L. Chhabra, while functioning as Deputy Supdt. of Police, Parliament Street Police Station, during the night between 31st December, 1967 and 1st January, 1968, from 1900 hours to mid night showed gross negligence and slackness in the performance of his duty in handling a large crowd of drunk revelers gathered near and in front of Regal Building and also at other places in the area of Connaught Place, New Delhi who not only caused obstruction to the free flow of traffic but also indulged in the acts of hooliganism by stopping and damaging cars, molesting ladies, and also removing pieces of jewellery from their persons. The victims of such rowdyism which prevailed in the jurisdiction of his police station are mainly S/Shrimati Maheshwar Dayal, A. K. Jalaluddin and his wife, Shanti Sehgal, S. C. Sawhney, Krishan Kumar Chadha Radhey Lal Mittal, K. L. Arya, Sohan Lal, K. L. Gupta. R. K. Seth, Pinto De Roserio, Mona Albuquerque, S. N. Raye, H. S. Duggal, H. R. Sikka, Bhupinder Singh, Bhalla the Iranian Ambassador, R. N. Sachdev, N. K. Garg and O. P. Anand. That the policeman posted on duty at the Regal Building and other places in Connaught Place under his supervision were either absent or remained silent spectators and miserably failed to prevent the acts of hooliganism. molestation and rowdyism. Article Ii That during the aforesaid period and while functioning in the aforesaid Police Station, the said Shri C. L. Chhabra, although he was apprised of all the incidents, reported either to the control room or directly to the Police Station Parliament Street, utterly failed to appreciate the situation properly and could not take effective measures to apprehend the miscreants or disperse the drunk revelers particularly when adequate force was available with him. Evidently the assessment of the situation made by him was absolutely incorrect with the result that his half-hearted action to push back the crowd yielded no fruitful results. Article Iii That during the aforesaid period and while functioning in the aforesaid Police Station the said C. L. Chhabra failed to inform the superior officers and receive guidance and/or reinforcements despite the fact that the situation got out of control and a prompt action was required to be taken for the dispersal of the hooliganism and he left Connaught Place area twice between those hours when his presence was very essential for leading the men under his control and charge to prevent the various incidents mentioned above."

(6) The statement of his defense was submitted by the petitioner on September 18. 1968 in which he did not admit any of the articles of the charge.

(7) Even before the statement of defense was submitted by the petitioner the Chief Secretary, Delhi Administration, had by an order dated July 15, 1968

appointed Shri R. K. Baweja, then Secretary (Judicial). as the Enquiry Officer. On September 13, 1968 the order appointing Shri Baweja as the Enquiry Officer was cancelled and the petitioner was required to submit his written-statement of defense within the further period allowed for the purpose. After the written statement of defense had been submitted the Chief Secretary again, by an order dated September 21, 1968, appointed Shri Baweja as. Enquiry Officer. Subsequently by an order dated November 30, 1968. the Enquiry Officer was changed. Shri Desh Deepak having become Secretary (Judicial) of the Delhi Administration was appointed by the Chief Secretary as the Enquiry Officer in place of Shri Baweja.

(8) An enquiry against the petitioner was held by Shri Desh Deepak. The Enquiry Officer submitted his report on March 21, 1969 exonerating Shri Chhabra from article Iii of the charge but held him guilty partly of articles I and Ii of the charge. His findings on those articles. of the charge were to the following effect:-

"It is held that on the night in question the Charged Officer showed gross negligence and slackness in performance of his duties by being mostly absent between 8 p.m. and 2.30 a.m. while acts of hooliganism, molesting of women, pelting of cars and even stabbing went on in the Connaught Place and Connaught Circus area, and this gross negligence and slackness was nothing short of serious misconduct. Part two is no fault of the Charged Officer but it does appear that other policemen took example and absented themselves to enjoy. This charge cannot be held to have been proved, because the Charged Officer had so placed himself that he could not be and was not in time apprised of the incidents which took place. He took no action whatever, and so he is not guilty of half-hearted action. But that portion of this charge should be deemed to have been proved which alleges that the Charged Officer failed to appreciate the situation properly and failed to take effective measures to apprehend the miscreants."

(9) Shri J. M. Lalvani, Joint-Secretary to the Government of India, in the Ministry of Home Affairs, by a Memorandum dated January 31, 1970 informed the petitioner that he agreed with the findings of the Enquiry Officer in so far as they related to first part of article I of the charge and a portion of article Ii of the charge and as he had provisionally come to the conclusion that the petitioner was not a fit person to be retained in service so he proposed to impose on the petitioner the penalty of removal from service. By that show cause notice the petitioner was given an opportunity of making a representation on the penalty proposed. The petitioner submitted a detailed representation on March 20, 1970 by which he tried to clear his position, pleaded that the long period of his suspension by itself had been a severe punishment for him and lastly requested for an opportunity of personal hearing.

(10) The show cause notice given by the Joint-Secretary to the Government of India. Ministry of Home Affairs, was cancelled and another notice (Memorandum No. 113/22/68AVD) dated June 1, 1970, purporting to be by order and in the name of the President of India, authenticated by Shri P. B. Rajagopalan, Deputy

Secretary to the Government of India, was issued. Paragraphs 2 and 3 of the new notice were as under :-

"On a careful consideration of the Inquiry Report aforesaid the President agrees with the findings of the Inquiry Officer in so far as they relate to first part of Charge I and a portion of Charge II which he has held proved, and for the reasons stated in the attached Memorandum holds that the second part of the Charge I, part of Charge II and Charge III, which the Inquiry Officer has held not proved, are also proved. The President has, Therefore, provisionally come to the conclusion that Shri C. L. Chhabra is not a fit person to be retained in service and so the President proposes to impose on him the penalty of removal from service. Shri C. L. Chhabra is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the penalty proposed will be considered by the President. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of the Memorandum by Shri Chhabra."

(11) The new show cause notice was received by the petitioner on June 20, 1970. He submitted a reply on July 3, 1970. In his reply he mainly relied upon the submissions made in his earlier representation dated March 20, 1970.

(12) Without waiting for the orders to be passed by the President of India, the petitioner, on September 22, 1970, submitted a petition under article 226 of the Constitution in which besides some ancillary reliefs he asked for quashing of the show cause notice, the preliminary enquiry by Shri R. K. Anand, the enquiry held by Shri Desh Deepak, the order of the Lt. Governor dated January 2, 1968, the order of the Chief Secretary by which he was placed under suspension and disciplinary proceedings were initiated against him.

(13) Elaborate arguments were addressed by Mr. Frank Anthony, learned counsel for the petitioner. It was contended that the findings of the Enquiry Officer were not based on any evidence and that moreover the enquiry proceedings were had as reasonable opportunity was denied to the petitioner to defend himself. It was further objected that the departmental enquiry was void ab initio as it could not be initiated by the Chief Secretary to the Delhi Administration. The preliminary enquiry by Shri R. K. Anand, Additional District Magistrate, was as well stated to be illegal and void and to have vitiated the departmental enquiry. It was urged that the Lt.-Governor had pre-judged the guilt of the petitioner and all the officers of the Delhi Administration being bound by the opinion of the Lt.-Governor the proceedings taken by them became bad. It was next contended that the impugned show cause notice was defective as a Deputy Secretary to the Government of India was not authorised to issue it on behalf of the President. It was lastly submitted that the suspension of the petitioner by the Chief Secretary to the Delhi Administration was ultra-vires.

(14) As already mentioned above the petitioner was appointed to a duty post of

the Delhi and Himachal Pradesh Police Service on June 12, 1963. According to the definition given in the Delhi and Himachal Pradesh Police Service Rules, 1961 a member of the Delhi and Himachal Pradesh Police Service means a person appointed in a substantive capacity to either grade of the service and includes a person appointed on probation to grade II of the Service. Rule 25(1) of the said Rules gave power of filling a duty post on an officiating basis, if a member of the service was not available.

(15) The petitioner not being a person appointed in a substantive capacity to the Delhi and Himachal Pradesh Police Service or to have been appointed on probation to grade II of that Service could not be regarded a member of the Service for purposes of the Delhi and Himachal Pradesh Police Service Rules.

(16) On November 20, 1965 the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules, 1965, were published. By those rules the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service (hereinafter referred to as "the Dhani Service") was constituted. Persons who immediately before the commencement of those rules were members of the Delhi and Himachal Pradesh Police Service were included in the Dhani Service at its initial constitution. The petitioner not being a member of the Delhi and Himachal Pradesh Police Service did not, Therefore, even become a member of the Dhani Service.

(17) Rule 37 of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules repealed the Delhi and Himachal Pradesh Police Service Rules. As provided by rule 37 notwithstanding the repeal any action taken under Delhi and Himachal Pradesh Police Service Rules was to be deemed to have been validly done or taken under the rules relating to Dhani Service. Those rules also contained rule 25, corresponding to rule 25 of the Delhi and Himachal Pradesh Police Service Rules, which enabled officiating appointments to duty posts. The result of these provisions was that even though the petitioner did not become a member of the Dhani Service for purposes of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules but he was to be deemed to have been validly appointed in an officiating capacity to a duty post of the Dhani Service.

(18) Rule 12 of the Classification, Control and Appeal Rules specifies disciplinary authorities. As provided by sub-rule (1) the President may impose any of the penalties mentioned in rule 11 on any Government servant. Sub-rule (2) of rule 12 reads :-

"(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in rule 11 may be imposed on- (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the Schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President; (b) a person appointed to a Central

Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made by the appointing authority or the authority specified in the Schedule in this behalf."

(19) To the rule is also appended the following Explanation :-

"Explunation.-Where a Government servant belonging to a Service or holding a Central Civil post of any class, is promoted, whether on probation or temporarily to the Service or Central civil post of the next higher class, he shall be deemed for the purposes of this rule to belong to the Service of, or hold the Central Civil post of, such higher class."

(20) As the petitioner can be deemed to have been appointed in an officiating capacity to a duty post in the Dhani Service, he in terms of the above quoted Explanation to rule 12 of the Classification, Control and Appeal Rules, is to be regarded as belonging to the Dhani Service for purposes of the Classification, Control and Appeal Rules.

(21) In the Schedule to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, which is deemed to be the Schedule to the Classification, Control and Appeal Rules, by virtue of rule 33 thereof, the following entries exist regarding the appointing and disciplinary authorities in so far as the Dhani Service is concerned :

Authority complement to impose penalties and penalties which it may impose (with Description of Service Appointing reference to item numbers in rule 11)	Authority
Penalties Delhi, Himachal Pradesh	Joint Secretary
Joint Secretary	Joint Secretary
All and Andaman	Ministry Secretary
Islands Police Service,	of home
of Home of Home	Grade, Ii
Affairs.	Affairs.
In respect of	Chief Secretary
(i) to (iv).	a member of
Delhi	the Service
Administration.	under the
Delhi Administration.	In respect of
Chief Secretary	(i) to (iv).
a member of	Secretary. Govern-
the Service	Government of Hi-
Serving under	Hi himachal Pradesh
the Govern-	desh.
Government of Himachal Pradesh.	In respect of Chief Secretary
(i) to (iv).	a member of Secretary, Andaman
the Service man and Nicobar	serving under bar Ad minis-
the Administration	and Nicobar
Administration.	

(22) The Penalties referred to in items (i) to (iv) of rule Ii of the Classification, Control and Appeal Rules are the minor penalties of censure, withholding of promotion, recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders and withholding of increments of pay. The petitioner having been posted as Station House Officer of Police Station Parliament Street, New .Delhi, he was evidently serving under the Delhi Administration and the Chief Secretary, Delhi Administration, was the disciplinary authority competent to impose on him any of the minor penalties.

(23) Rule 10(1) of the Classification, Control and Appeal Rules permits the

appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, to place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. The Chief Secretary, Delhi Administration, being the disciplinary authority could place the petitioner under suspension as disciplinary proceedings against him were contemplated. The Joint-Secretary, Ministry of Home Affairs as the appointing authority for DHANI Service grade Ii could also have passed the order of suspension but the order of suspension having been made by the disciplinary authority as specified in the Schedule to the Classification, Control and Appeal Rules cannot be regarded to be invalid because it was not made by the appointing authority. Both the appointing and the disciplinary authority had the power of placing the petitioner under suspension. I am also unable to agree with the learned counsel for the petitioner that in view of the order of the Lt. Governor dated January 2, 1968 the disciplinary authority in placing petitioner under suspension merely acted in a mechanical way. The Lt.-Governor had, of course, suggested suspension of the petitioner but the order of the Chief Secretary shows that the petitioner was placed under suspension by him as disciplinary proceedings were contemplated. The order of suspension was, Therefore, in no way invalid.

(24) The contention that the enquiry proceedings were void ab initio as these could not be initiated by the Chief Secretary to the Delhi Administration is equally devoid of force. Rule 13 of the Classification, Control and Appeal Rules specifically gives power to a disciplinary authority, competent under the rules to impose any of the penalties specified in clauses (i) to (iv) of rule II, to institute disciplinary proceedings against any Government servant for the imposition of any of the major penalties specified in clauses (v) to (ix) of rule II, notwithstanding that such disciplinary authority is not competent under the rules to impose any of the latter penalties. Though disciplinary proceedings were instituted against the petitioner for the imposition of a major penalty the Chief Secretary, in terms of rule 13, was competent to do so as he was competent to impose any of the minor penalties on the petitioner.

(25) The contention that the preliminary enquiry held by Shri R. K. Anand, Additional District Magistrate, was illegal and, Therefore, the departmental enquiry also got vitiated has no force. Regarding the preliminary enquiry by Shri R. K. Anand, the objection raised was that the District Magistrate had already ordered a Sub-Divisional Magistrate to hold a Magisterial enquiry under the statutory provisions of rule 16.38(1) of the Punjab Police Rules and the Lt.-Governor could not substitute another authority for holding the enquiry. Rule 16.38(1) is as follows :-

"(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official

relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having 1st class powers."

It will be noticed that this rule applies when information is received by a District Magistrate which indicates the commission by a Police officer of a criminal offence in connection with his official relations with the public. There were no allegations, whatsoever, that the petitioner had been guilty of any criminal offence. Rule 16.38(1), Therefore, had no application and the order made by the District Magistrate could not stand in the way of the Lt.-Governor in directing an enquiry by the Additional District Magistrate. In my opinion neither the enquiry held by the Additional District Magistrate was in any way illegal nor did it vitiate the disciplinary proceedings against the petitioner.

(26) I have not been impressed with the contention that the Lt.-Governor had pre-judged the liability of the petitioner and that vitiated the proceedings taken by certain officers of the Delhi Administration. From the order of the Lt.-Governor, reproduced earlier, it cannot be said that he had come to any final conclusion that for the happenings on the night between the 31st December 1967 and the 1st January 1968 the responsibility was of the petitioner. A report was submitted to him about the incidents that had taken place by the Deputy Inspector General of Police. As it appeared that the subordinate police took the whole affair too lightly and did not take effective action to prevent untoward incidents he ordered a Magisterial enquiry. His remark that adequate patrolling did not appear to have been done by the Deputy Superintendent of Police did not tantamount to pre-judging his guilt. When incidents of rowdyism take place in the presence of police the normal reaction is that the officials on duty may not have taken all the necessary steps. Whether a particular officer had done all that was feasible or expected from him under such circumstances. can, however, be known by an enquiry. There was thus no pre-judging the liability of the petitioner and it would be difficult to say that any officer of the Delhi Administration acted in a particular way on account of the order of the Lt.-Governor.

(27) Another contention raised by the learned counsel for the petitioner was that the Deputy Secretary to the Government of India was not authorised to sign the show cause notice issued in the name of the President of India. It was urged that the disciplinary authority for imposing the penalty of removal from service being the President the show cause notice should have been signed by the President himself.

(28) It was not even disputed by the learned counsel for the petitioner that Deputy Secretaries to the Government of India are authorised by the rules made by the President to authenticate orders and other instruments made and executed in the name of the President. It was not necessary for the President to himself sign the show cause notice as it was not a function which could not be delegated. The cases relied upon in this connection are clearly distinguishable. In *Union of India v. T. S. Malhotra* 1969 S.L.R. 241(i) an order for compulsory

retirement from service, issued under Fundamental Rule 56(j), was signed by a Secretary to the Government of India and was not expressed in the name of the President. The order did not state that any one had exercised his mind and formed an opinion that it was in public interest to retire the officer concerned. A Full Bench of this Court held that the appropriate authority being one of the Ministers mentioned in the order there was nothing to show that any reference for approval was made to any of the Ministers and it thus followed that the appropriate authority had not ordered the compulsory retirement. The next case referred to was that of *Bk. Sardari Lal v. Union of India and others* 1971 S.L.R. 168(2). That was not a case of issuing a show cause notice on the conclusion of an enquiry but of the interpretation of clause (c) of the proviso to article 311(2) of the Constitution. Under that clause of the proviso article 311(2) does not apply where the President is satisfied that in the interest of the security of the State it is not expedient to hold the enquiry. Their Lordships of the Supreme Court held that the function in clause (c) of the proviso to article 311(2) of the Constitution cannot be delegated by the President to any one else in the case of a civil servant of the Union. Obviously the observations of the Supreme Court in that case can have no analogy to issuing a notice under article 311(2) of the Constitution for giving a reasonable opportunity to a Government servant of making a representation on the penalty proposed as a result of the enquiry held against him.

(29) The show cause notice is in the name of the President and has been authenticated by a duly authorised officer. The validity of the notice cannot be called in question on the ground that it is not a notice given by the President. Article 77(2) of the Constitution of India is applicable, which provides that the validity of an order or instrument made and executed in the name of the President and which is authenticated in the manner specified in the rules made by the President shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(30) It has next to be seen whether reasonable opportunity to defend himself was denied to the petitioner. The learned counsel for the petitioner submitted that certain relevant documents were not supplied and even the most important defense witnesses were not allowed to be examined. It was stated that when articles of charge were received by the petitioner through Memorandum dated July 10, 1968 and he was required to submit a written statement of defense he had asked the Chief Secretary Delhi Administration, through an application dated July 22, 1968, for copies of the statements of witnesses 21 to 37. The statements recorded by the Deputy Inspector General of Police during the enquiry conducted by him and the order under which Shri R. K. Anand, Additional District Magistrate (South) was asked to hold the enquiry. In his statement of defense as well the petitioner was stated to have mentioned that in spite of his requests copies of the statements of witnesses named at Serial Nos. 22 and 23 of the list had not been supplied and copy of the report made by Shri B. N. Mehra, Superintendent of Police (Lines) was also withheld from him.

(31) Admittedly all the statements of witnesses were made available to the petitioner before the commencement of the enquiry. There is also nothing to show that any witnesses were examined by the Deputy Inspector General of Police in connection with the report submitted by him to the Lt.-Governor. So far as the order of the Lt.-Governor is concerned a copy thereof was placed on the record by the petitioner himself and it was nowhere mentioned by him that the copy was not with him during the enquiry. Similarly a copy of the District Magistrate's order by which he had asked a Sub-Divisional Magistrate to hold an enquiry, under provisions of rule 16.38(1) of Punjab Police Rules, was with the petitioner. The only grievance of the petitioner can, Therefore, be that copies of the reports submitted by the Deputy Inspector General, which according to the petitioner had exonerated him of all blame, and the report made by Shri Mehra, Superintendent of Police, were without justification withheld from him.

(32) The petitioner had filed a copy of an. application dated January 10, 1969, which according to him had been presented to the enquiry officer for examining sixteen witnesses. On behalf of the respondents receipt of this. application was not expressly denied. The only plea taken was that it was not on the record of the enquiry proceedings.

(33) The record of the enquiry proceedings produced in this Court shows that besides eleven witnesses examined in support of the articles of charge, the enquiry officer recorded the statements of five defense witnesses and also placed on record a pre-prepared statement of the petitioner. The record produced does not contain any order sheets or any miscellaneous papers, whatsoever. It does not contain an order closing the defense evidence or an order by which the enquiry officer may have disallowed any of the witnesses to be produced in defense. On the file cover of the enquiry proceedings it is written as under :-

"FILE Iii Secretary (Judicial) Statements of witnesses Public Witness 's & DW''s List of Public Witness 's & DW''s Inquiry against Shri C. L. Chhabra D.S.P."

In spite of the heading of the file cover it contains no list of prosecution witnesses or the defense witnesses. Those lists, Therefore, must have been either detached before the record was produced in this Court or must have been placed on Part I or Part II of the record. Part I or Part II were not produced and the learned counsel appearing for the respondents stated that all the available record relating to the enquiry had been produced.

(34) The circumstances clearly indicate that there was a list of defense witnesses, which was not produced. The contention of the petitioner that he applied for sixteen witnesses being examined must, therefore, be correct. Some of the witnesses from that list who were not examined were on duty at the places where the incidents of misbehavior and rowdyism took place. Evidently they were very material witnesses for the defense.

(35) I have no doubt that the petitioner was prejudiced in his defense by his not being supplied copies of the report made by the Deputy Inspector General of

Police, the report of Shri Mehra Superintendent of Police, who was on duty and had helped in dispersing the crowd near Regal Cinema building, and even some important defense witnesses not being examined.

(36) Mr. Frank Anthony as well urged that the findings given by the enquiry officer were based on no evidence. In that connection it was pointed out that one of the findings was that the petitioner "showed gross negligence and slackness in the performance of his duty by being mostly absent between 8 p.m. and 2.30 a.m., while acts of hooliganism, molesting of women, pelting of cars and even stabbing went on in the Connaught Place and Connaught Circus area and this gross negligence and slackness was nothing short of serious misconduct". Some of the evidence was read to show that the petitioner was patrolling the area within his jurisdiction but as that was fairly extensive so he possibly could not be present at all places at the same time and if in his absence some untoward incidents happened then he could not be held responsible for them. The prosecution evidence was also stated to show that under orders of his superior, Shri Mehra, the petitioner had to go for some time to the Iranian Embassy as the car of the Ambassador, who was accompanied by his wife and daughter, was stopped by a group of people shouting "Happy New Year" and some stones were thrown at it. According to the statement made by the driver of the car the police arrived at once and tried to disperse the crowd and even used sticks (Dandas).

(37) Shri R. M. Mehta, learned counsel for the respondents, urged that appreciation of the evidence should be left to the disciplinary authority as on a petition under article 226 of the Constitution the High Court does not sit as a Court of appeal over the decision of the authority holding a departmental enquiry and has only to see whether the enquiry has been held by a competent authority and according to the procedure prescribed and whether the rules of natural justice have been observed. Reliance was placed on the case of State of Andhra Pradesh Vs. Sree Rama Rao, in which the Supreme Court held that where there is some evidence which the authority has accepted and which evidence may reasonably support the conclusions that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under article 226 to review the evidence and to arrive at an independent finding on the evidence.

(38) The finding that the petitioner was mostly "absent between 8 p.m. and 2.30 a.m." on the night between the 31st December 1967 and the 1st January 1968 is not the only finding against him. Even if that finding may be wrong and not supported by any evidence still the evidence relating to other matters should, in my opinion, be appropriately left to be appreciated by the disciplinary authority.

(39) As, however, the petitioner was prejudiced in his defense due to some of his most important witnesses not being examined and copies of the reports of the Deputy Inspector General of Police (Range) and Shri Mehra, Superintendent of Police, not being made available to him. the proceedings from the stage before the closing of the defense evidence have to be quashed.

(40) The petition is, Therefore, accepted to the extent that proceedings against the petitioner from the stage immediately before the closing of the defense evidence are quashed, including show cause notice No. 113/22/68-ADV dated June 1, 1970. Unless the authorities may like to drop the enquiry against the petitioner in view of his past record of service and the fact that there are no allegations against him that he was personally present at the places where unfortunately some untoward incidents happened by a merry-making crowd on the new year night and also because he has now been under suspension for over three years, the enquiry should be commenced from the stage immediately before the defense evidence was closed. In that event the petitioner should be supplied copies of the reports of the Deputy Inspector General of Police (Range) and of Shri Mehra, Superintendent of Police, and the statements of the defense witnesses who were not examined should be recorded. As the officer who had previously held the enquiry has already expressed his opinion regarding the merits of the articles of the charge, it would be proper if another enquiry officer is appointed for completing the enquiry as expeditiously as may be possible. In the circumstances of the case the parties shall bear their own costs K.L.B.