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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No.739/1998
With
Original Application No.1896/1998
This the 6th day of December, 2010

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

O.A. No.739/1998

Ex. Head Constable Manjeet Singh No.1380/PCR
S/O Sher Singh, previously employed in
Delhi Police, R/O 42 Vikas Vihar,
Chander Vihar, Near Virdi Property Dealer,
Nilothi Extn., Nangloi, New Delhi. ... Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.
3. Additional Commissioner of Police/Ops.,
Police Headquarters,
IP Estate, New Delhi.
4. Dy. Commissioner of Police,
Police Control Room,
Police Headquarters,
IP Estate, New Delhi. ... Respondents

(By Shri H. K. Gangwani, Advocate)

O.A. No.1896/1998

Ex. Constable Shri Bhagwan
S/O Munshi Ram, previously employed in
Delhi Police, R/O 29/16, Rajender Nagar,

Near Telephone Exchange,
Sonipat, Haryana.

... Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.
3. Additional Commissioner of Police/Ops.,
Police Headquarters,
IP Estate, New Delhi.
4. Dy. Commissioner of Police,
Police Control Room,
Police Headquarters,
IP Estate, New Delhi.

... Respondents

(By Shri H. K. Gangwani, Advocate)

ORDER

Justice V. K. Bali, Chairman:

Two connected Original Applications bearing OA Nos.739/1998 and 1896/1998 were dismissed by this Tribunal vide order dated 20.11.2000. Aggrieved the applicants filed two writ petitions bearing WP(C) Nos.2093/2001 and 2094/2001 before the High Court of Delhi. Inasmuch as, the applicants herein had faced a common departmental enquiry and were punished vide the same orders, the OAs were decided by a common order. The High Court too decided the writ petitions by a common order. The High Court while setting aside the order

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passed by this Tribunal has remitted the matter for re-consideration of the issue on merits.

2. The applicants sequel to a joint departmental enquiry held against them and one HC Dharam Pal, were dismissed from service vide orders dated 18.7.1995 passed by Deputy Commissioner of Police/PCR. All of them challenged the order of the disciplinary authority by way of appeal, which was dismissed by Additional Commissioner of Police (Ops.) vide orders dated 22.7.1996. These are the two orders that were challenged by two out of three, namely, Manjeet Singh and Shri Bhagwan, with the result, as on today, as indicated above.

3. The facts of the case as may emanate from the pleadings and the accompanying documents, inclusive of the impugned orders, reveal that a joint departmental enquiry was initiated against the applicants and their co-delinquent HC Dharam Pal with prior approval of the Additional Commissioner of Police, under provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 on the allegations that they were detailed for duty at PCR van R-31 from 8.00 p.m. to 8.00 a.m. on 21/22.2.1995. They chased a tempo No. MP-09-D-2079 from Rajasthan Hotel and intercepted it near Wazirabad Road, Brijpuri. Const. (Dvr.) Shri Bhagwan asked the tempo driver either to pay Rs.50/- or to accompany him to police station, but the tempo driver refused to pay the amount. I/C van HC Manjeet Singh also

misbehaved with the tempo driver. Meanwhile Insp. Balwant Singh, PCR (night checking officer) happened to reach the spot, and on questioning by him, the tempo driver, namely, Vinod Kumar, disclosed the above facts and also submitted a written complaint to him. The Inspector also recorded the complaint of the tempo driver in the checking register of PCR van R-31.

4. In its endeavour to bring home the guilt of the applicants and HC Dharam Pal, the department led evidence before the enquiry officer. Insp. Ishwar Singh/PCR, who was examined as PW-1, stated that on receipt of checking diary report of Shri Emile Lakra, ACP, Night GO PCR on 22.2.1995, he made a separate note based thereon, which he proved as Ex.PW-1/A, and sent it to ACP/Pact which was forwarded to DCP/PCR. Insp. Balwant Singh was examined as PW-2. He stated that he was posted in PCR and that on the intervening night of 21/22.2.1995 he was checking Inspector in Central Zone, East Zone and North East Zone. At about 3.15 a.m. he reached Brijpuri, Wazirabad Road and found a tempo No.MP-09-D-2079 parked on the road. A PCR van was also parked on its side. He enquired about the matter, and was told by the tempo driver Vinod Kumar that Const. (Dvr.) Shri Bhagwan had demanded Rs.50/- from him, and that HC Manjeet Singh misbehaved with him saying that he gets Rs.25/- of one slap. He asked the tempo driver to give a written complaint so that necessary action could be taken. The tempo driver handed over him a written complaint, which was attached

with the checking diary and sent to senior officers. He saw the complaint of Vinod Kumar which was exhibited as Ex.PW-2/B and his checking report as Ex.PW-2/C. In the cross examination adverted to him, he stated that he had reached at Wazirabad Road and Brijpuri Road crossing. The tempo was parked at the T-point on the corner of main Wazirabad Road and the PCR van was at some distance in the dark at Brij Puri Road. He stopped at some distance but could not tell the exact distance. He could not tell from where the complainant tempo driver produced the paper on which he wrote his complaint. The tempo driver first made his complaint verbally and when asked to give it in writing, after some time he submitted a written complaint which was written on the spot and in his presence. He denied the allegation that he did one sided act. He rather stated that action was initiated after he was fully satisfied. Const. Chander Sheker/PCR was examined as PW-3. He brought the daily diary and checking register of 22.2.1995. According to DD No.8, suspension report of staff of R-31 was recorded and Insp. Balwant Singh entered his checking at 3.15 a.m. in the checking register of R-31, photocopy whereof was proved and exhibited as Ex.PW-3/E. No cross examination was adverted to this witness. ACP Emile Lakra/PCR was examined as PW-4. He stated that on the intervening night of 21/22.2.1995 he was Night GO/PCR. In the morning he received checking diary of Insp. Balwant Singh along with a complaint of Vinod Kumar written in Hindi. The Inspector had recommended

action on the complaint and he forwarded the same to Addl.DCP/PCR and also mentioned it in his checking diary, which was exhibited as Ex.PW-4/A. In the cross examination adverted to him, he stated that the incident did not happen in his presence, therefore, he did not make any enquiry, but forwarded the report of the checking officer. The complainant and the driver of the tempo Vinod Kumar, was examined as PW-5. He deposed that about 3-4 months ago a blue colour gypsy stopped him near Wazirabad Bridge and harassed him asking him to accompany them to police station. Meanwhile a fat officer arrived to whom he gave in writing the complaint Ex.PW-2/B, written in his own hand which bore his signatures. When cross examined, he stated that the gypsy was present when the officer arrived, but he would not recollect whether any Sardar was there in the gypsy staff, and that the person who stopped him was not present. The enquiry officer in the report mentioned that all defaulters were present. The complainant would not know the number of the gypsy but he wrote the same as per directions of the officer. He further stated that the paper was provided to him by the officer and he wrote the complaint under street light. The colour of the gypsy of the officer was white. When questioned by the enquiry, he stated that the complaint was not written by him, but the staff of the van stopped him, misbehaved and demanded money. After questioning by the enquiry officer, the applicants and their co-delinquent were given further opportunity to cross

examine this witness, but they did not avail the same. On the basis of evidence adverted to above, the enquiry officer framed the following charge:

"You, HC Manjeet Singh, 1380/PCR/IC Van, HC Dharam Pal, No.353/PCR (Gunman) and Ct. (Driver) Siri Bhagwan, 4322/PCR are hereby charged that on 21/22.2.95 you all were detailed for duty at PCR Van R-31 from 8 PM to 8 AM. The R.A.P. of the said PCR van is at Shiv Vihar Pulia, Karawal Nagar Road Delhi. You stopped a tempo No. MP-09-D-2079 near Wazirabad Road Brij Puri. You, HC Manjeet Singh I/C (Van) misbehaved with tempo driver and Ct. driver Siri Bhagwan demanded Rs.50/- from tempo driver Shri Vinod Kumar. Inspector Balwant Singh of PCR (Night checking officer) happened to reach at the spot at about 3.15 AM, the tempo driver namely Vinod Kumar S/o Shri Raghbir Singh disclosed the above facts to the Inspector and submitted a written complaint to him.

The above act on the part of you HC Manjeet Singh, 1380/PCR/IC Van, HC Dharam Pal, No.353/PCR (Gunman) and Ct. (Driver) Siri Bhagwan, 4322/PCR amounts to gross misconduct, remissness, dereliction to the govt. duty as you indulged in the corrupt activities by conducting unauthorised checking of the tempo which renders you liable to be punished u/s 21 of D.P. Act 1978."

The delinquents were given opportunity to lead evidence in their defence. They availed the opportunity and examined Manjeet Singh Chauhan as DW-1 and Kali Charan as DW-2. The statements made by these two witnesses are identical. It is stated by DW-1 that he was residing at the given address in Brijpuri Colony. On the intervening night of 21/22.2.1995 he was sleeping in front of his shop. At about 3 or 3.15 a.m. he heard the sound of a gypsy and woke up. The white gypsy was coming

from the side of Wazirabad Bridge and policemen were sitting in it. A tempo also came from Wazirabad Road which was stopped by the gypsy staff. Some conversation between the tempo drive and the policemen took place. Meanwhile, another gypsy arrived in which a fat officer was present. Staff of both the vehicles talked among themselves in smiling way. Thereafter the gypsy which had arrived first left and the fat officer talked to the tempo driver. Then a third gypsy came from Shiv Vihar Colony and all the three policemen, i.e., the applicants and their co-delinquent, were present in it. As soon as the gypsy stopped, the officer became angry. After that what happened the witness would not know. The applicants and other during the proceedings before the enquiry officer raised four points. It was first urged by them that as per the statement of Vinod Kumar, a blue gypsy intercepted his tempo and the policemen present in it demanded money, and that the applicants would have no link with the incident; that the complainant had not supported the statement of Insp. Balwant Singh and without his support, the statement of Balwant Singh would be of no meaning and consequence; that both the defence witnesses had corroborated the statement of the complainant; and that the charge was not based on evidence and was a mere reproduction of the summary of allegations. The enquiry officer dealt with all the four points raised by the defaulters in their defence and rejected the same by a process of reasoning. He then discussed the evidence of the witnesses

examined on behalf of the department and on the basis of the same concluded that the charge against the delinquents would stand proved. The enquiry officer made a mention of the statement made by Insp. Balwant Singh who had fully supported the case of the department, and further mentioned that the written statement made by Vinod Kumar was sent along with checking diary to senior officers for necessary orders, and the Inspector also incorporated this fact in the checking register of PCR van R-31. He referred to the documentary evidence which would prove the incident on the intervening night of 21/22.2.1995 and sending of complaint and recording of the same, as fully adverted to above, while dealing with the evidence of PWs-3 and 4. Insofar as, the statement of PW-5, complainant Vinod Kumar, is concerned, the enquiry officer observed that he was the main witness and had stated that about 3-4 months ago his tempo was stopped by the staff of a blue gypsy and he was harassed and money was also demanded from him. He also mentioned that Vinod Kumar had given a written complaint (Ex.PW-2/B) which was written by him in his own hand and bore his signatures, and that during cross examination this witness also stated that he would not recollect whether any Sardar was present in the staff of the blue gypsy, and did not identify the defaulters. The enquiry officer then mentioned that the said witness seemed to have been won over, but he had admitted that he was harassed and money was demanded from him by the staff of the gypsy, and

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that he had submitted written complaint to Insp. Balwant Singh, before the conclusion was arrived at by the enquiry officer, as mentioned above. In the reasoning given by him, he also mentioned that the testimony of Insp. Balwant Singh was trustworthy and he had no grudge against the defaulters, and that the complaint made by Vinod Kumar was sent to senior officers, which was submitted by him at the spot.

5. The disciplinary authority in its order dated 18.7.1995, after referring to the case history and the evidence that came to be led during the course of enquiry on the basis of the DE file, and after hearing the representation of the delinquents, reached to the conclusion that the charge framed against the defaulters had been held rightly proved. Agreeing with the findings of the enquiry officer, he inflicted the punishment of dismissal from service on the applicants and their co-delinquent. They were to be dismissed with immediate effect and their suspension period from 22.2.1995 till the date of issue of the order was ordered to be treated as not spent on duty for all intents and purposes. The appellate authority dealt with the points raised by the applicants and other, and by a process of reasoning came to the conclusion that the report of the enquiry officer and the order passed by the disciplinary authority were correct. We may refer to the part of the order which deals with the defence projected by the applicants. The same reads as follows:

"...The appellants vide their appeals raised doubt about the identity of the PCR Van involved at the relevant time or checking as well as about the PCR personnel on duty who had stopped the tempo and tried to extort money from the tempo driver. For this purpose, they have tried to utilize the complainant Vinod Kumar, PW-5 during the DE as well as the DWs produced by the appellants. The contradiction brought in the statements of complainant Vinod Kumar i.e. the one that he made vide his written complaint dated 22.2.95 immediately after the incident and his statement recorded during the DE as PW-5, leads to a reasonable inference that he has been won over by the appellants by the time his statement was recorded during the DE. The colour of PCR Van as well as the police personnel on duty who were connected with the incident are sought to be confused. The same effort has been made through DWs produced by the appellants. In this regard it would be relevant to mention that concerned Checking Officer Insp. Balwant Singh No.D-I/540 was examined during the DE as PW-2 and he was elaborately cross-examined by the appellants but even during cross-examination, this question of identity was never put to him that he had implicated in his report wrong police personnel or that they were not on duty with the PCR Van which he checked as the checking Officer. Minor discrepancy which came on record in the number of the PCR Van in question on which the appellants were on duty, is not material. The identity of the police personnel and the PCR Van which stopped the tempo and tried to extort money from the tempo driver is not in doubt on the basis of evidence of the checking Officer Insp. Balwant Singh.

An effort has also been made by the appellants to create an impression as if the Checking Officer was interested in motivating a complaint against the appellants and implicated the appellants in the DE but nothing has been brought on record to show as to why the Checking Officer was so minded against the appellants. In fact, the conduct of the Checking Officer is normal and natural and he has carried out the checking as per established practices in the department and despite a very elaborate cross-examination, the appellants have failed to displace the credibility of

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his evidence. It is ridiculous for the appellants to suggest that the Checking Officer, Insp. Balwant Singh should have joined the guard with him in witnessing the checking. Insp. Balwant Singh as Checking Officer was not required to do this as Checking Officer as per practice in the department not there was any requirement of law for the same. It was also not mandatory for the checking Officer as per S.O. No.125 to record the statements of the appellants at the time of the checking of this nature. The delinquents were questioned orally and in view of written complaint having been made by the complainant Vinod Kumar, the Checking Officer was not required to record the statements of the delinquents.

Further, all the appellants who were on duty on a particular PCR Van at the relevant time are equally liable as none of them had objected to the dishonest attempt on the part of the others to extort money from the tempo driver. There was no obligation on the part of the Checking Officer to inform the Control Room before carrying out the checking of the particular PCR Van. The Checking Officer had conducted himself in a natural manner in carrying out the checking and submitted his report to his senior officers in the departmental hierarchy in normal course. As per facts and circumstances of the case, the appellants were indulging in unauthorised checking of vehicles against the departmental instructions and were indulging in corrupt practice through their demand of money from the tempo-driver concerned and further threatening him of physical assault in case he showed reluctance to pay and the complainant had submitted his complaint on the spot to the Checking Officer Insp. Balwant Singh in ordinary course...."

The appellate authority also considered the quantum of punishment and expressed the opinion that police personnel found indulging in corrupt practices would deserve to be weeded out from the force and no leniency ought to be shown to them, in public interest.

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6. This Tribunal while dismissing the OAs vide order dated 30.11.2000, observed as follows:

"5. We have with the assistance of the learned counsel gone through the evidence in some portions and have in particular perused the statement dated 22.2.1995 written and drawn up in the hand of Shri Vinod Kumar. This forms part of the evidence relied upon during the course of the disciplinary proceedings. This particular document which is in the nature of an FIR clearly brings out the name of Shri Bhagwan stating that it was this delinquent official who had chased him and had stopped him and had also asked for illegal gratification. The complainant, Shri Vinod Kumar also mentioned that one Sardarji was involved in the act of harassment along with Shri Bhagwan Singh. A perusal of this document, read together with whatever evidence has been shown to us by the learned counsel, makes us feel that the truth could best be ascertained essentially with reference only to this document.

6. Our task in such cases, as has been held repeatedly by the courts and this Tribunal is not to reapprise the evidence and arrive at our own conclusions. On the other hand, we are here to decide on the basis of preponderance of probabilities and see if the charge leveled can be sustained having regard to the preponderance of probabilities. In this view of the matter, the statement of Shri Vinod Kumar read with the other evidence leaves no manner of doubt in our mind, that an iota of doubt about the colour of the PCR van notwithstanding the guilt in its essential particulars is fully brought home and accordingly the delinquent officials deserved to be punished."

In the writ preferred by the applicants against the order of this Tribunal, it was urged that the complaint of Vinod Kumar was held by the Tribunal to be good enough to nail the guilt of the applicants, and that in the absence of any evidence against the applicants, there was no warrant for the departmental authorities

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to find them guilty nor was there any reason for the Tribunal to decide against them. The counsel representing the department urged that Vinod Kumar had been won over. On the rival contentions of the counsel for parties, the High Court observed that there was reference to another police officer, i.e., Insp. Balwant Singh, to whom the complaint was made by Vinod Kumar. When the Hon'ble Court was apprised by the counsel for the applicants that evidence of Balwant Singh could not be taken into consideration by the High Court as it was not discussed by the Tribunal, and that it may not be appropriate for the High Court to look into the said evidence without considering the view expressed by the Tribunal thereon and the remaining evidence on record, the order that came to be passed by the High Court, which may be relevant, reads as follows:

“11. In our opinion, learned counsel is right in his submission because the entire evidence is to be seen to determine whether it is a case of no evidence and if it is so then, of course, the case made out against the Petitioners by the Respondents cannot stand. However, if there is some evidence on record, this Court cannot re-appreciate the evidence and draw a conclusion different from that drawn by the departmental authority or the Tribunal unless the conclusion arrived at is perverse.

12. In this case, the entirety of the evidence on record has not been taken into consideration by the Tribunal. Therefore, we set aside the impugned order and remand the case for reconsideration of the issues on merits.”

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7. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. We may mention at the very outset that delinquency of an employee in departmental proceedings is not required to be proved as the guilt of an accused facing criminal trial. It is by now a well settled proposition of law that whereas a criminal charge is to be proved beyond shadow of reasonable doubt, in departmental enquiries it is proved on preponderance of evidence, wherein explanation given by the delinquent employees is also of crucial importance.

8. The primary and in fact the only contention of the learned counsel representing the applicants, as before the High Court as also before us is that it is a case of no evidence. In our considered view, in the context of the facts and circumstances of the case, the only plea raised by the learned counsel as noted above has no merit. We have referred to the entire evidence led by the parties hereinbefore. It may be recapitulated. The incident, it may be recalled was of the intervening night of 21/22.2.1995. Insp. Ishwar Singh, examined as PW-1, on receipt of checking diary report of Shri Emile Lakra, ACP, Night GO/PCR on 22.2.1995, made a separate note which was exhibited as PW-1/A. It was sent to ACP who forwarded it to DCP/PCR. Insp. Balwant Singh, examined as PW-2, had fully supported the case of the department. No doubt, the incident of the applicant Shri Bhagwan and others making demand of Rs.50/- on complaint of

Vinod Kumar was not actually witnessed by him, but he had reached the spot immediately after such demand was made and after Vinod Kumar was harassed. The witness clearly mentioned that he was informed of the harassment meted out to Vinod Kumar and demand of money from him, and that Vinod Kumar had also made a written complaint. This complaint was attached with the checking diary and sent to senior officers. He saw the complaint of Vinod Kumar which was exhibited as Ex.PW-2/B and the checking report was exhibited as Ex.PW-2/C. ACP Emile Lakra, examined as PW-4, stated that on the intervening night of 21/22.2.1995 he was Night GO/PCR and in the morning he had received checking diary of Insp. Balwant Singh along with complaint of Vinod Kumar written in Hindi. Vinod Kumar, the complainant, examined as PW-5, did not deny the incident. He even admitted giving the complaint Ex.PW-2/B in writing and also admitted that the same was in his own hand, which bore his signatures. He too, by and large, had supported the case of the department in his examination in chief, but made an effort in the cross examination to present a somewhat twisted version of the event, and also would not identify the delinquents who were present at the time of recording of his statement. It is interesting to note that the event was not even denied by the applicants. They were deputed at a particular place on a particular day and time to do their duty and that they were found there by Insp. Balwant Singh is also not in dispute. The witnesses examined by

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them in their defence also confirmed, insofar as taking place of the event is concerned, even though it is a different matter that they would not refer to the delinquency of the applicants alleged against them. That Vinod Kumar made a complaint in writing is proved to the hilt. He himself admitted making the complaint and signing the same. There is no cross examination adverted to Insp. Balwant Singh that he was inimically disposed towards the applicants and had reasons to foist a false case against them. The oral deposition of the witnesses and the documentary evidence adverted to above would clearly suggest that the applicants tried to extort money from Vinod Kumar and harassed him. The Statement of Vinod Kumar cannot be totally excluded. As mentioned above, he, by and large, supported the case of the department in his examination in chief, and had candidly admitted giving a complaint in writing in that regard. Even in criminal trials statements of hostile witnesses can be taken into consideration to some extent. In a recent decision recorded by us in OA No.655/2007 in the matter of *ASI Raj Singh & Others v Government of NCT of Delhi*, decided on 2.11.2010, where too the complainant had supported the case of the department but would not identify the delinquents, we held that such a witness, insofar as he may support the case of the department, cannot be simply excluded because in his cross examination he may have tried to deviate from his written complaint, and further that even in criminal trials, the statement of hostile witnesses can be taken

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into consideration to some extent. The Hon'ble Supreme Court in *Karuppanna Thevar & Others v State of Tamil Nadu* [AIR 1976 SC 980] held that statement of a hostile witness may not be rejected outright but the court has at least to be aware that *prima facie* a witness who makes different statements at different times has no regard for truth, and the court should, therefore, be slow to act on the testimony of such a witness and normally it should look for corroboration to his evidence. We find ample corroboration to the statement of Vinod Kumar as made by him in his examination in chief, and we, without hesitation reject the part of his statement which may exculpate the applicants. Further, *falsus in uno falsus in omnibus*, i.e., one who has made false statement with regard to one aspect, would have made false statement with regard to all other aspects, is not a principle which is accepted in this country. That being so, it is permissible to rely upon a part of the statement of Vinod Kumar, which would support the case of the department, and to reject the one which would be against the department, particularly when with regard to the statement which goes against the department, there is evidence to believe that the same would be false. What thus transpires is that the applicants were indeed present on the day and time when Insp. Balwant Singh reached the spot, and that the tempo and its driver Vinod Kumar were also present at the spot. The department led sufficient evidence to pin down the delinquency of the applicants and the same, in our view, is sufficient to

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discharge the burden of proof as may be required in departmental proceedings.

9. As observed by the Hon'ble High Court, this Tribunal has to come to the conclusion with regard to delinquency of the applicants on overall assessment of the evidence. We have done the same, and our firm conclusion is that the department was able to bring home the guilt of the applicants as per standards of proof as may be requited in departmental proceedings.

10. Finding no merit in these Original Applications, we dismiss the same, leaving, however, the parties to bear their own costs.


(L. K. Joshi)
Vice-Chairman (A)


(V. K. Bali)
Chairman

/as/