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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**O. A. No.289/1997 with
O.A. No.420/1997**

This the 31st day of May, 2010

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

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

O.A. No.289/1997

Ex Head Constable Dev Dutt

... Applicant

(By Shri Ankur Gupta, Advocate)

Versus

Union of India & Others

... Respondents

(By Ms. Renu George, Advocate)

O.A. No.420/1997

Ex Constable Majid Khan

... Applicant

(By Shri Anil Singal, Advocate)

Versus

Union of India & Others

... Respondents

(By Ms. Renu George, Advocate)

(By Shri K. M. Singh for Shri R. V. Sinha for Respondent No.1, and
Ms. Alka Sharma for Respondent No.2, Advocates)

1. Whether to be reported?

2. Whether to be circulated to other Benches?

V. K. Bali
(V. K. Bali)
Chairman

(29)

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**HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
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O.A. No.289/1997

Ex Head Constable Dev Dutt
No.242/C Delhi Police S/o Bhikka Ram,
R/o Bikaner, Police Station Riwari,
District Riwari, Haryana.

... Applicant

(By Shri Ankur Gupta, Advocate)

Versus

1. Union of India through
Lt. Governor of Delhi through
Commissioner of Police, Delhi,
Police Headquarters,
MSO Building, IP Estate,
New Delhi-110002.
2. Additional Commissioner of Police
(Northern Range), Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi-110002.
3. Shri A. K. Patnaik,
Additional Deputy Commissioner of Police
(Central District), Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi-110002.
4. Shri S. B. S. Tyagi,
Assistant Commissioner of Police/Karol Bagh,
Enquiry Officer, through Dy. Commissioner of
Police/HQ(I), MSO Building, IP Estate,
New Delhi-110002. ... Respondents

(By Ms. Renu George, Advocate)

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O.A. No.420/1997

Ex Constable Majid Khan
 No.2033/C Delhi Police S/o Karim Khan,
 R/o Village Bhadiray, Post Office Brang,
 Post Office Sarka Ghat, Distt. Mandi,
 Himachal Pradesh.

... Applicant

(By Shri Anil Singal, Advocate)

Versus

1. Union of India through
 Lt. Governor of Delhi through
 Commissioner of Police, Delhi,
 Police Headquarters,
 MSO Building, IP Estate,
 New Delhi-110002.
2. Additional Commissioner of Police
 (Northern Range), Delhi Police Headquarters,
 MSO Building, IP Estate,
 New Delhi-110002.
3. Shri A. K. Patnaik,
 Additional Deputy Commissioner of Police
 (Central District), Delhi Police Headquarters,
 MSO Building, IP Estate,
 New Delhi-110002.
4. Shri S. B. S. Tyagi,
 Assistant Commissioner of Police/Karol Bagh,
 Enquiry Officer, through Dy. Commissioner of
 Police/HQ(I), MSO Building, IP Estate,
 New Delhi-110002.

... Respondents

(By Ms. Renu George, Advocate)

O R D E R**Justice V. K. Bali, Chairman:**

By this common order, we propose to dispose of two connected Original Applications as common questions of law and facts arise therein. Learned counsel representing the parties also suggest likewise. The applicants Dev Dutt and Majid Khan in the

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two OAs as referred to above faced a joint departmental enquiry with their co-delinquents HC Ajaib Singh and Ct. Shish Ram. All of them were dismissed from service. Aggrieved, they filed appeal, which found no favour with the appellate authority. Three out of the four persons mentioned above, had filed Original Applications in this Tribunal which were dismissed vide common order dated 29.5.2000. Out of three, the applicants named above filed writ petitions before the Hon'ble High Court of Delhi, which were disposed of by a common order dated 12.10.2009. The High Court was of the view that the Tribunal had not given reasons for arriving at its conclusions and that there was no discussion of facts of the case apart from a broad mention thereof. It was also observed that ordinarily the matter would have been disposed of on merits being considerably 'old, but inasmuch as, there was challenge to the enquiry proceedings, which, it was urged on behalf of the applicants, were vitiated, the High Court remitted the matter to the Tribunal for reconsidering the issues raised so that they may have benefit of the view of the Tribunal. This is how these two matters have come for decision before us for the second time.

2. This matter came up for hearing before us earlier on 9.3.2010 when arguments were heard and judgment was reserved. While, however, preparing the judgment we observed that it was primarily urged on behalf of the applicants that present was a case of no evidence, but no arguments as to how the enquiry

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proceedings would be vitiated were advanced. Since it was urged before the High Court that the enquiry proceedings were vitiated, but no arguments had been addressed in that connection, vide order dated 11.3.2010 we gave another chance to the applicants to address arguments on that behalf, and the matter was directed to be listed again on 5.4.2010. Arguments were concluded in this case on 25.5.2010 and the judgment was reserved.

3. The enquiry officer after recording statements of Inspector S. C. Batra, SHO/DBG Road; Shri D. S. Sanga, ACP/Paharganj, and reproducing the statements of Shri Deependra Pathak, Mahabir Prasad and Virendra Nath, which were recorded during preliminary enquiry, by bringing the said statements on record and by virtue of provisions contained in rules 15 and 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter to be referred as the Rules of 1980) and some other evidence, framed the following charges against the applicants and their co-delinquents:

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"You, HC Ajaib Singh No.102/C and Ct. Majid Khan No.370/C in that while posted at PS DBG Road, were detailed for picket duty at Rani Jhansi Road on 9.6.92, stopped Sh. Mahabir Prasad s/o Ram Avtar Aggarwal r/o 4-F-4 NPH Road, Jodhpur, Rajasthan and his friend Sh. Virendra Nath s/o Ram Nath r/o Chanpasera Road, Jodhpur, Rajasthan at 1.00 PM when they were on their way to hotel Vikrant, Fatehpuri, Delhi after seeing a night show at Liberty Cinema. HC Dev Dutt No.242/C and Ct. shish Ram No.686/C who were detailed for motor-cycle patrolling were also present at the picket at that time. Ct. Majid Khan No.370/C took Mahabir Prasad and Virendra Nath

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inside the police booth at Rani Jhansi Road, New Rohtak Road where Ct. Shish Ram was already sitting inside the booth. They started searching Mahabir Prasad and Virendra Nath and threatened them by saying that they were coming from Kamal Restaurant. During the search Ct. Shish Ram took Rs.4000/- in denomination of Rs.500/- note (8 notes) when they asked for reason as they had not committed any crime the police personnel threatened them that in case they were arrested, they would have to pay Rs.10000/- each for bail and for their release. It is further alleged that after taking Rs.4000/- they were allowed to go. On reaching the Hotel Vikrant Sh. Mahabir Prasad informed the PCR about the incident which was brought to the notice of worthy DCP/C, who directed Sh. Deependra Pathak, IPS, ACP/UT, night G.O. to look into the matter. Sh. Deependra Pathak, IPS, ACP/UT, along with Mahabir Prasad came at the picket at Rani Jhansi Road, P.S. DBG Road where Mahabir Prasad identified HC Ajaib Singh and Ct. Majid Khan. Sh. Deependra Pathak conducted personal search of HC Ajaib Singh and recovered 8 notes of Rs.500/- denomination each from his left pocket and Rs.1600/- were recovered from his other pocket which he could not account for satisfactorily. Subsequently Sh. Deependra Pathak gave message on wireless and called HC Dev Dutt and Ct. Shish Ram in the police station where they were also identified by Sh. Mahabir Prasad. This was a serious and grave misconduct on the part of HC Ajaib Singh No.102/C, Ct. Majid Khan No.370/C, HC Dev Dutt No.242/C and Ct. Shish Ram No.686/C being a member of disciplined force."

The applicants and others were given chance to lead evidence in their defence. They availed the said opportunity and examined some witnesses. They submitted their defence statements on 9.2.1994. By making a very brief mention of the facts and evidence, the enquiry officer concluded as follows:

"From the statements of Sh. Virendra Nath PW-2C and Mr. Mahabir Prasad PW-2D it became

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abundantly clear that Ct. Shish Ram No.686/C had taken away 8 notes of Rs.500/- denomination from the possession of Mr. Mahabir Prasad, when HC Ajaib Singh and Ct. Majid Khan had stopped them at police piekct Rani Jhansi Road – Idgah X-ing for checking purposes.

Ct. Majid Khan No. 370/C had taken Mr. Mahabir Prasad to nearby police booth for carrying personal search of the complainant Mr. Mahabir Prasad and Ct. Shish Ram No.686/C had taken away 8 notes of Rs.500/- denomination from him in the presence of Ct. Majid Khan.

HC Dev Dutt on motorcycle patrolling duty in the area of PS DBG Rd. was standing outside the police booth whereas his rider Ct. Shish Ram No.686/C was conducting the personal search of the complainant Mr. Mahabir Prasad on a flimsy ground.

Rs.4000/- (8 notes of Rs.500/- denomination) was recovered by Sh. Deependra Pathak ACP/UT in the presence of the complainant from the left pocket of the shirt of the HC Ajaib Singh 10/C and was returned to the complainant there only.

The defence witnesses produced by these 4 police personnel don't say anything about the personal search of the complainant and subsequent recovery of the money from the possession of the one of the defaulters. They only say that complainants were saying that they will teach them a lesson since police personnel have harassed them by carrying out checking at the police booth. This doesn't convey any thing and provide no defence to the defaulters in view of the money being recovered from the personal search of the one of the defaulters in the presence of the complainant by Sh. Deependra Pathak ACP/UT.

Under the circumstances it has been established that Ct. Majid Khan and HC Ajaib Singh stopped the complainant at Rani Jhansi Road – Idgah X-ing, Ct. Majid Khan took the complainant Mr. Mahabir Prasad to the police booth, Ct. Shish Ram took the personal search of the complainant Mr. Mahabit Prasad and took away Rs.4000/- from his possession, the same money Rs.4000/- (8 notes of Rs.500/- denomination) was recovered from the

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personal search of HC Ajaib Singh, where motorcycle patrolling officer HC Dev Dutt kept a general watch outside the police booth and these police personnel individually and collectively took away Rs.4000/- from the personal possession of Mr. Mahabir Prasad in connivance with each other on the false threat of arresting the complainants for which they would have had to spend Rs.10000/- only for getting themselves bailed out."

While accepting the report of the enquiry officer, the disciplinary authority vide order dated 9.4.1994 dismissed all the delinquents from service. The period of suspension w.e.f. 10.6.1992 to the date of issue of the order was ordered to be treated as not spent on duty.

The disciplinary authority while tracing the history of the case up to the applicants and others submitting their representation with reference to the findings of the enquiry officer, while dismissing the applicants from service, held as follows:

"I have gone through the written representations submitted by the defaulters HC Ajaib Singh No.102/C, HC Dev Dutt No.242/C, const. Majid Khan No.370/C and Const. Shish Ram No.686/C with reference to the findings of the E.O. and other documents available on the D.E. file. In the interest of natural justice, they were heard in O.R. They did not state anything apart from what they have submitted in their representations. I have gone through the findings of the Enquiry Officer and the representations of the defaulters. In spite of what all the defaulters do claim in their defence in their representations, during the enquiry and in their oral submissions before the undersigned the charges against them do stand proved, and I agree with the findings of the Enquiry Officer that the defaulters have individually and collectively extorted money from the complainant thereby grossly misusing their being policemen in uniform and on duty. They have behaved in no way better than criminals, and such police personnel, if allowed to continue in the department, will further get

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emboldened to commit further such gross irregularities and acts of misconduct. They deserve exemplary punishment so that other police personnel with similar proclivities can learn by example, and it is absolutely essential in the interest of the overall discipline and image of the entire police force that the defaulters are awarded a major deterrent penalty..."

Aggrieved, all the delinquents filed an appeal which had been dismissed by the appellate authority vide order dated 21.2.1995.

The disciplinary authority, as may be seen from the operative part of the orders passed by it and which has been reproduced above, did not deal with the points raised by the applicants and others.

The appellate authority, however, referred to all the pleas raised by the applicants and rejected the same. It may be noted that the applicants and others had taken objection that the departmental enquiry was ordered without obtaining prior approval of the Additional commissioner of Police/Northern Range, as required under rule 15(2) of the Rules of 1980. This contention was rejected by observing that permission under rule 15(2) of the said Rules was duly obtained by the disciplinary authority vide Addl.C.P./Northern Range memo No.1507-8/P.Sec.(NR) dated 10.6.1992. The appellate authority further observed that provisions of rule 15(2) of the Rules of 1980 provide that in cases where a preliminary enquiry discloses commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl.C.P. concerned as to whether a criminal case

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should be registered and investigated or departmental proceedings should be held. It was observed that in view of the fact that a criminal case may not have succeeded on such evidence in the court, a conscious decision was taken to deal with the applicants departmentally. The applicants raised the plea that they were not permitted to take help of defence assistant due to which they did not have proper opportunity to cross examine the prosecution witnesses properly, as they themselves had no experience of preparing defence in their favour in such proceedings. They had urged that the enquiry officer did not inform them about their right to engage defence assistant. This plea was rejected by observing that the applicants were provided opportunity to get assistance of a defence assistant and they accordingly availed the services of a retired police officer for this purpose, and that it was not incumbent upon the enquiry officer to persuade the applicants to have defence assistant; it was for them to have defence assistant for themselves and the enquiry officer was not required to force it upon them. The plea of the applicants that they were not given all the relevant documents by the enquiry officer which were required to prepare their defence, was repelled by observing that all relevant documents that had been relied upon by the enquiry officer had been furnished to the applicants, and that the statements of three witnesses, namely, Shri Deependra Pathak, Shri Virendra Nath and Shri Mahabir Prasad, which were recorded during preliminary enquiry were furnished to the applicants and as Shri Deependra

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Pathak was posted out of Delhi and the other two witnesses also left Delhi and their presence could not be secured without undue delay and expense, and further that copy of the preliminary enquiry findings which was submitted by Shri D. S. Sangha, ACP/Paharganj, was not required to be given because the same was not relied upon by the enquiry officer, and only copies of such documents were required to be furnished which were relied upon by the enquiry officer during the departmental enquiry proceedings.

It was also observed that Shri D. S. Sangha was available and he was subjected to cross-examination by the applicants. The appellate authority then referred to case law on the issue and observed that in disciplinary proceedings, orders passed by the disciplinary authorities could not be interfered on the only ground that the evidence is insufficient to sustain conviction in a criminal trial. The evidence as may be required to prove guilt in a criminal case was distinguished to prove the charge against an employee in departmental enquiry. Supplying copy of the preliminary enquiry report to the applicants was held not necessary. Insofar as the plea of the applicants that material witnesses were not examined and only their statements recorded during the preliminary enquiry were brought on record, it was again observed that Shri Deependra Pathak, IPS, who had conducted the initial enquiry was not in Delhi as he had been posted outside Delhi, and the other two witnesses also were residents of Rajasthan and their presence could not be secured without undue expense and delay, and,

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therefore, the enquiry officer had sufficient reasons to dispense with their personal presence. It was further observed that Shri D. S. Sangha, ACP/Paharganj, who conducted the preliminary enquiry and recorded their statements was available and was also open to cross examination. It was further observed as follows:

“...Moreover, it is not only these statements in P.E. which have been transferred to the D.E. but there is sufficient corroborative evidence to prove the allegations against the defaulters and it is incorrect to say that the disciplinary authority has passed these orders without giving adequate reasons in support of the same. Technically rules of evidence act do not apply to administrative adjudication...”

While referring to some case law, it was observed, thus:

“...In the present D.E. there is some evidence in the sense that both the victims Mahabir Prasad and Virender Nath were available during the P.E. and their statements were recorded. Even the officer who conducted the P.E. was also available and open for cross examination.”

The result of the OAs filed against the orders as referred to above before this Tribunal and that of the writ petitions before the High Court has since already been indicated.

4. Before we may take into consideration the rival contentions raised by the learned counsel representing the parties, it would be useful to take note of some undisputed facts, or such facts which stood proved. Mahabir Prasad, the person robbed of his money by the applicants and two others, immediately after the incident on reaching the hotel informed the PCR about the

(40) incident. It was brought to the notice of DCP/C who directed the night G.O. Shri Deependra Pathak, ACP/UT to look into the matter. Shri Pathak along with the complainant came to Rani Jhansi Road picket, where the complainant identified HC Ajaib Singh and Ct. Majid Khan. On personal search of HC Ajaib Singh Rs.4000/- in the shape of 8 notes of Rs.500/- denomination each were recovered from his pocket, and Rs.1600/- more were recovered from his other pocket for which he could not furnish any satisfactory reply. HC Dev Dutt and Ct. Shish Ram were called in the police station where they were also identified by Mahabir Prasad. The enquiry was marked to Shri S. B. K. Singh, the then ACP/K.B. on 10.6.1992 vide an order of even date. On 11.6.1992, summary of allegations along with list of PWs were given to the defaulters. It may be mentioned at this stage that whereas Shri Deependra Pathak had made on-the-spot oral enquiry and recovered the money as mentioned above, the same day, ACP/Paharganj Shri D. S. Sangha had conducted a preliminary enquiry. Shri D. S. Sangha appeared before the enquiry officer and stated that on 10.6.1992 on the order of DCP/C he had recorded statements of Shri Deependra Pathak, ACP/UT, Shri Virendra Nath and Shri Mahabir Prasad, shown as exhibits PW2-B, 2-C and 2-D. Insofar as, Shri Deependra Pathak, Mahabir Prasad and Virendra Nath are concerned, they were not examined in the regular departmental enquiry. Their statements, as mentioned above, were recorded by Shri D. S. Sangha in preliminary enquiry only. It would be seen from the report of the

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enquiry officer that on 17.4.1993 DCP/C was asked as to whether the DE proceedings be continued or be held in abeyance till availability of Shri Deependra Pathak, IPS, on whose report the DE was initiated. The enquiry officer also mentioned that the complainants, namely, Mahabir Prasad and Virendra Nath were residing at distant places in Jodhpur (Rajasthan). The enquiry officer further mentioned that on perusal of the application DCP/C desired that the statements recorded during the preliminary enquiry could be brought on record of the regular departmental enquiry when the witnesses are no longer available, under rule 15 (3) of the Rules of 1980. This memo was received on 27.4.1993. It would further appear from records of the case that the enquiry officer had started recording statements of witnesses on 8.7.1992. On the said date, statements of Inspector S. C. Batra and Shri D. S. Sangha were recorded. On the same day, applicant Dev Dutt had made an application for providing him defence assistant. It is on 27.7.1992 that the approval of the DCP/C was received and the defaulters were informed about the same on 29.7.1992. These are the facts which clearly emerge from the records and in particular, the report of the enquiry officer and the orders passed by the disciplinary and appellate authorities.

5. Shri Anil Singal, learned counsel representing the applicant, in the first instance contends that present is a case of violation of rule 15(2) of the Rules of 1980, inasmuch as, while

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conducting the preliminary enquiry into the incident on the same very day by Shri D. S. Sanga, no prior approval of the competent authority as envisaged under rule 15(2) was obtained. In that connection the learned counsel refers to pleadings made in paras 4.9, 4.10 and ground L of the OA. Pleadings made in the relevant paragraphs, as mentioned above, is that no prior approval of the competent authority was obtained before initiating the preliminary enquiry. This has been refuted by Ms. Renu George, learned counsel representing the respondents. This point came to be considered by the appellate authority, and the plea raised by the applicants that prior approval was not obtained, has been repelled by specifically mentioning that permission under rule 15(2) was duly obtained by the disciplinary authority vide Addl.C.P./Northern Range memo No.1507-8/P.Sec.(NR) dated 10.6.1992. We may also refer to further observations made on that behalf by the appellate authority. The same read thus:

“...the procedure laid down in criminal proceedings for seizure in an anti-corruption case are not applicable in this incident and it was precisely for such reasons that permission was obtained under rule 15(ii) of Delhi Police (Punishment & Appeal) Rules which states that in cases where a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl.C.P. concerned as to whether a criminal case should be registered and investigated or a D.E. should be held. In view of the fact that a criminal case may not have succeeded on such evidence in the court, a

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conscious decision was taken to deal with the appellants in the departmental enquiry."

Confronted with the position aforesaid, Shri Singal would shift his stand from passing no order of prior approval by the Addl. C.P. under rule 15(2) for taking a decision as to whether departmental proceedings should be held or a criminal prosecution need to be launched, to say that even if prior approval was obtained, the same was given without any application of mind. Sans pleadings on that behalf raised at any stage, in our view, it would not be permissible for the applicants to raise this issue at this distance of time. We may, however, mention that there is a Full Bench decision recorded by this Tribunal in OA No.94/2007 decided on 24.4.2008 in the matter of **HC Rohrash Singh v Government of NCT of Delhi & Others**, holding that no reasons are required to be recorded for preferring one course of action over the order. In other words, the concerned authority is not required to record reasons why it is preferring departmental proceedings over a criminal trial or vice versa. Shri Singal would then urge that in any case there had to be application of mind even for permitting departmental enquiry. This aspect has been dealt with by the appellate authority even though, in the context of the plea of there being no prior approval. The said authority has clearly mentioned that a conscious decision was taken to deal with the applicants in a departmental enquiry, reason therefor being that the charge against the applicants may not sustain in a criminal trial. The contentions raised by the learned

(44) counsel representing the applicants based upon rule 15(2) as noted above are thus repelled. Shri Singal appears to be on no better wicket while urging that evidence of material witnesses, namely, Mahabir Prasad, Virendra Nath and Deependra Pathak could not be brought on record in the facts and circumstances of the present case. With a view to appreciate the contention of the learned counsel, it would be useful to produce rule 15(3) and 16(iii). The same read thus:

“15(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.”

“16(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been

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recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

6. We may at the very outset mention that in the facts and circumstances of the present case, rule 15(3) of the Rules of 1980 may not be applicable. We may also mention that insofar as, the enquiry officer is concerned, he mentioned in his report that the DCP/C desired that statements recorded during the preliminary enquiry could be brought on record of the regular departmental enquiry when the witnesses are no longer available, under rule 15 (3) of the Rules of 1980, but that, in the facts hereinafter to be stated, in our considered view, would make no difference. We may, however, straightway observe that insofar as, rule 15(3) is concerned, the same is not applicable, inasmuch as, by virtue of provisions contained in the said rule, the statements recorded in the preliminary enquiry may be brought on record of the departmental proceedings when the witnesses are no longer available. Present is not a case where the witnesses may not be available. Insofar as, Shri Deependra Pathak is concerned, he was very much available, even though he was posted out of Delhi,

(46) whereas the other two witnesses, namely, Mahabir Prasad and Virendra Nath were also available, even though not being at Delhi but at Jodhpur in Rajasthan. Records of the case reveal that insofar as, recording of evidence in the regular departmental enquiry is concerned, it came to be recorded for the first time on 8.7.1992. On that date, Inspector S. C. Batra and Shri D. S. Sanga, ACP/Paharganj were examined by the enquiry officer. On 10.8.1992, the enquiry officer recorded statements of ASI Ram Kumar and Const. Kulvinder Singh. On 24.9.1992 the DE file was sent to HAP/C, as Shri S.B.K. Singh, the enquiry officer, was transferred to Arunachal Pradesh. On 7.10.1992, the DE was entrusted to Shri R. S. Krishnia for further enquiry. The new enquiry officer had clearly mentioned in his report that summons (parwanas) were issued to the PWs and defaulters many times by the then ACP/Karol Bagh. It is further observed by the enquiry officer that on 17.4.1993 DCP/C was asked as to whether the DE proceedings be continued or held in abeyance till availability of Shri Deependra Pathak, IPS, on whose report the DE was initiated, and further that the complainants were residing at distant places in Rajasthan. On perusal of the application DCP/C desired that the statements recorded during the preliminary enquiry could be brought on record of the DE proceedings when witnesses are no longer available, as per provisions of rule 15(3) of the Rules of 1980. This memo was received on 27.4.1993. What clearly emerges from the proceedings conducted by the enquiry officer is

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that after statements of the two witnesses, namely, S.C. Batra and D. S. Sanga were recorded, attempts were made to serve other material witnesses, like Mahabir Prasad, Virendra Nath and Deependra Pathak. The efforts of the department appear to have continued for more than six months. The departmental enquiry, it may be recalled, was entrusted to R. S. Krishnia on 7.10.1992, and he made enquiries from DCP/C on 17.4.1993 as to whether he should await availability of the witnesses, on which he was told that the statements of the witnesses as named above recorded during the preliminary enquiry may be brought on records if they may not be available, as per provisions of rule 15(3) of the Rules of 1980. We did not have an occasion to see the reply of the DCP received by the enquiry officer pursuant to his enquiries made on 17.4.1993, but it appears to us that even if rule 15(3) might have been mentioned by the said officer, but the rule that may be applicable would be 16(iii), the same would not vitiate the enquiry. The circumstances as may entail bringing on record previously recorded statements as envisaged under rule 16(iii) were in existence. Number of attempts, it appears, were made to secure the presence of the three witnesses named above, which proved abortive. The appellate authority too had referred to this aspect of the case and observed that it was a case where Shri Deependra Pathak, an IPS officer, who had conducted the initial enquiry, was not in Delhi as he had been posted outside Delhi, and the other two witnesses also were residents of Rajasthan and their presence

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could not be secured without undue delay and expense, and, that, therefore, the enquiry officer had sufficient reasons to dispense with their personal presence. It is too well settled a proposition of law by now that mention of a wrong provision of law or even non-mention of such provision would not vitiate the orders. Once, the power is available under the statute and has been rightly exercised, mere wrong mention of the rule or section would not make any difference. As per provisions contained in rule 16(iii) of the Rules of 1980, the enquiry officer is empowered to bring on record earlier statement of any witness whose presence cannot be secured without undue delay, inconvenience or expense, if he considers such statement necessary. The condition precedent for exercising this power is that such statement has to be recorded and attested by an officer superior in rank to the accused officer, or by a magistrate, or is either signed by the person making it or has been recorded by such officer during an investigation or judicial enquiry or trial. Even unsigned statements can be brought on record, but in that case statement of the officer or magistrate who had recorded the statement of the witness concerned, has to be recorded. We have seen the statements of the three persons named above, which, in fact, have been brought on records by the applicants themselves. They are signed by the concerned persons and have been attested by D. S. Sanga, admittedly an officer superior in rank than the applicants and their co-delinquents. D. S. Sanga, as mentioned above, appeared as a witness in the departmental enquiry and

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proved the statements recorded by him. The provisions of rule 16(iii), in the facts and circumstances of the case, were applicable and, therefore, the statements of three witnesses named above could be brought on record.

7. The third and the last argument raised by Shri Singal that the applicants were not provided assistance of defence assistant to defend them, also appears to be devoid of any merit. It is the case of the respondents and it appears from the impugned orders as well that the applicants were indeed provided assistance. It is no doubt true that when the first two witnesses, namely, S. C. Batra and D. S. Sanga were examined, the applicants might have cross-examined the said witnesses themselves, but from the sequence of events it appears that an application seeking assistance to defend the applicants, even though came to be made on 8.7.1992, but the same was after statements of these two witnesses had already been recorded. The enquiry officer in his report has mentioned that the statements of the defaulters were recorded. They denied the allegations and claimed regular departmental enquiry, and summons were issued for the next date, and on 8.7.1992 statements of S. C. Batra and D. S. Sanga were recorded. It is after the statements of the two witnesses as named above came to be recorded that it has been mentioned in the report that on the same day, defaulter Dev Dutt had moved an application for permission to have assistance of parvi officer, which was sent to

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DCP/C. It appears that the enquiry officer after receipt of the application aforesaid did not record any further evidence on the said date and it is only when the approval of the DCP came on 27.7.1992 that he recorded statements of other witnesses on 10.8.1992. It is not the case of the applicants that one of them had made the application before start of the trial, i.e., recording of evidence. It has been rather pleaded in para 4.13 of the OA filed by Majid Khan that vide application dated 8.7.1992, a co-delinquent requested the enquiry officer to allow services of defence assistant, and that written consent of the said defence assistant was also submitted, but the enquiry officer verbally declined to allow the request to have a defence assistant, and further that no written orders were passed by the enquiry officer on that behalf. This assertion made in the said para is factually incorrect. It appears as mentioned above, that immediately on recording of statements of two witnesses, namely, S. C. Batra and D. S. Sanga, a request was received by the enquiry officer, who sent the same to the DCP/C for according approval of providing defence assistant to the applicants, and did not record any further evidence on the said date. If it was the case of the applicants that the assistance of defence assistant was demanded before statement of the first witness could be recorded, they ought to have stated so. The applicants have rather come up with a blatant lie that the request made by them on that behalf was declined by the enquiry officer and that too, verbally. Once, the enquiry officer had referred the request to DCP/C and

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not declined the request of the applicants on that behalf, it would further appear that the request came to be made only after statements of two witnesses had already been recorded. The enquiry, in our view, is not vitiated. It further appears to us that there was sufficient evidence on records to sustain a finding of guilt. The incident as such is not in dispute. Presence of the applicants and their co-delinquents at the spot is also not in dispute. The same, in any case, has been overwhelmingly proved by the formal witnesses examined by the department on that behalf. The defaulters while availing the opportunity of leading evidence in their defence, examined Ravi Kiran Uppal. His statement was recorded on 18.1.1994. He stated that on the intervening night of 9/10.6.1992 at about 4 a.m. he along with his wife was going to Railway Station for Vaishno Devi from his house at Anand Parbat, and that at Rani Jhansi Road picket two policemen, one Sardar Head Constable and the other a Constable stopped the TSR and enquired about their movement. Meanwhile a police vehicle (gypsy) came to the picket and the policemen present there saluted the person who had come in the gypsy. He asked the TSR driver to move on but the driver told that he would move only after seeking permission of the policemen. When he went near the gypsy, he saw that the two policemen who had stopped them were asked to sit in the gypsy and thereafter the gypsy took a u-turn and went towards PS DBG road. He and his wife then moved towards Railway Station. The witness identified HC Ajaib Singh and Const.

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Majid Khan as the policemen at the picket. The defaulters examined Ram Singh. The said witness stated that he was a TSR driver and that on the intervening night of 9/10.6.1992 he was coming from Punjabi Bagh General Store Road via Rohtak Road at about 12.30 p.m. Two passengers asked him to go to Fatehpuri in front of Kamal Restaurant and they told that they would pay Rs.20/- and asked him to leave them at Ajmeri Gate. When he reached the red light point near Idgah, the picket staff posted there, HC Ajaib Singh and Const. Majid Khan stopped his TSR and after formal checking allowed them to proceed. The witness further stated that on way the two passengers who were probably from Rajasthan, were very annoyed due to the said checking and were saying that policemen harass public without any reason, and that they would lodge a complaint against them and teach them a lesson. He further stated that the two passengers were drunk. He left them at Ajmeri Gate. From the statements of the witnesses examined by the applicant themselves, it is clear that the incident is not in dispute. That two persons from Rajasthan were stopped and confronted by HC Ajaib Singh and const. Majid Khan, is an admitted position. A police officer came there and took these two policemen to the police station is also not in dispute. PW-1 Inspector S. C. Batra, who was SHO of the police station, in his deposition stated that on 10.6.1992 after receiving information from the duty officer he reached police station and found ACP/UT Shri Deependra Pathak present in the police station. On enquiry it

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was found that HC Ajaib Singh and Const. Majid Khan who were detailed for picket duty at Rani Jhansi Road and HC Dev Dutt and Const. Shish Ram who were detailed for motorcycle patrolling were present at the picket at that time and had taken Rs.4000/- from one Mahabir Prasad of Jpdhpur while he was going in a TSR along with his friend Virendra Nath. He further stated that ACP/UT had recovered this amount from the possession of HC Ajaib Singh. Even though, Deependra Pathak may have been examined only during the preliminary enquiry and not in the regular departmental enquiry, what he did was witnessed by S. C. Batra. The money was recovered from possession of HC Ajaib Singh. Shri D. S. Sanga who conducted the preliminary enquiry and recorded statements of Mahabir Prasad, Virendra Nath and Deependra Pathak, was examined and he categorically stated that he had recorded their statements. The said statements were exhibited. He also stated that Mahabir Prasad and Virendra Nath had identified all the four defaulters. No cross examination was at all adverted to this witness, nor is there even a suggestion that he had made false statement. It may be recalled that the incident is of intervening night of 9/10.6.1992 and D. S. Sanga had conducted the preliminary enquiry on 10.6.1992, i.e., immediately after the occurrence. Even though, he may not be an eye witness, but he was reported the incident by the eye witnesses who were the complainants and even though, strict provisions of the Evidence Act may not be applicable in departmental proceedings, yet, his

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statement would be relevant under provisions of section 6 of the said Act. He was told of the incident and robbery indulged into by the police personnel immediately after the occurrence by those who were themselves robbed.

8. Shri Ankur Gupta, learned counsel representing applicant Dev Dutt had additional argument to raise. He urged that insofar as, Dev Dutt is concerned, even if one is to go by the statements of the complainants as made by them in the preliminary enquiry, no case could be made out against him. Before we may deal with this aspect of the case, we may mention that insofar as, presence of applicant Dev Dutt and others at the spot is concerned by virtue of duties assigned to them, proved by proper evidence, there is no dispute. It may be recalled that HC Ajaib Singh and Const. Majid Khan were detailed for picket duty at Rani Jhansi Road, PS DBG Road. HC Dev Dutt and Const. Shish Ram were also detailed for motorcycle patrolling duty. There is a police booth at Rani Jhansi Road. Const. Majid Khan had taken Mahabir Prasad and Virendra Nath inside the police booth where Const. Shish Ram was already sitting. They started searching Mahabir Prasad and Virendra Nath and threatened them by saying that they were coming from Kamal Restaurant and that they would be arrested, and during search, Const. Shish Ram took away Rs.4000/- from them. When the incident was reported to higher authorities, ACP Deependra Pathak along with the complainants

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came to the picket at Rani Jhansi Road, where complainant Mahabir Prasad identified HC Ajaib Singh and Const. Majid Khan. On personal search of HC Ajaib singh, Rs.4000/- were recovered. Deependra Pathak had sent a message on wireless and called HC Dev Dutt and Const. Shish Ram in the police station. They too were identified by Mahabir Prasad. It may also be recalled that Dev Dutt was pillion of the motorcycle rider Const. Shish Ram, and insofar as, shish Ram is concerned, he was already sitting inside the police booth and he is one of the persons who searched pockets of Mahabir Prasad. In the background of the facts as mentioned above, we may have a look at the statement made by Mahabir Prasad. He stated that on 9.6.1992 he came to Delhi with his friend Virendra Nath in connection with business and stayed in Hotel Vikrant in Fatehpuri area. He further stated that at about 1 a.m. he and Virendra Nath were returning to their hotel in a three wheeler after watching a picture in Liberty cinema, while one constable Majid Khan and HC Ajaib Singh, whose names came to be disclosed to him now on verification, were checking at the check post near Rani Jhansi Road, Idgah. They stopped their three wheeler and asked from where they were coming, whereupon Mahabir Prasad told that they were coming after watching a picture. The policemen insisted that they were coming from Kamal Restaurant and took them inside the check post for search, where one policeman was sitting, whose name later came to be disclosed as Shish Ram, who took away Rs.4000/- from Mahabir Prasad and

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then allowed them to go. He further stated that one motorcycle was parked at some distance from the picket and Dev Dutt, whose name also came to be disclosed later on, was standing outside. The statement of Virendra Nath is similar. What is thus proved from the records is that all four delinquents were posted for duty at one place. Two of them, namely, HC Ajaib Singh and Const. Majid Khan stopped Mahabir Prasad and Virendra Nath. Three out of four, namely, Ajaib Singh, Majid Khan and Shish Ram were inside the police post searching the complainants, while Dev Dutt who was one of the motorcyclist on duty along with Shish Ram, was standing outside the police post with the motorcycle. The mere presence of Dev Dutt outside the police post, in totality of the facts and circumstances of the case, as mentioned above, would not absolve him of the charges. Concurrent findings of the enquiry officer, disciplinary and appellate authorities are that robbery by policemen was done in connivance and conspiracy with each of them. Dev Dutt was standing outside the police post. The complainants could see him standing there along with the motorcycle. Surely, if the witnesses could see him standing outside the police post, Dev Dutt also must have been in a position to see what was going on inside the police post. He could not be silent spectator. Shish Ram, with whom he was on motorcycle patrolling duty of the area, was inside the police post extorting money, along with other co-delinquents. The circumstances of the case lead to an irresistible conclusion that Dev Dutt would be standing outside

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the police post to see that some higher officer or some other may not come; and if they were to come, he would signal to those inside the police post, so that they could stop what they were doing. He may not have committed an overt act, but his intention appears to be the same as that of his co-delinquents. We do not find any merit in the plea raised by the learned counsel representing applicant Dev Dutt that there was no evidence against him.

9. Finding no merit in the Original Applications, the same are dismissed, leaving, however, the parties to bear their own costs.

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

V. K. Bali
(V. K. Bali)
Chairman

/as/