

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.2000/2000

**Reserved On:16.08.2016
Pronounced on: 24.08.2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)**

Constable Ranbir Singh No. 723/N.E
S/o. Shri Chand Singh, aged 35 years,
R/o C-374, Ganga Vihar,
Delhi-94.

.. Applicant

(Argued by: Shri Anil Singhal)

Versus

1. Union of India,
Through its Secetary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Lt. Governor of Delhi,
5, Shyam Nath Marg,
Delhi-54.
3. Commissioner of Police,
New Delhi Range,
Police Head Quarters, I.P. Estate,
M.S.O. Building,
New Delhi.
4. Addl. Commissioner of Police,
New Delhi Range;
Police Head Quarters, I.P. Estate,
New Delhi.

.. Respondents

(By Advocate: Mr. Amit Anand)

ORDER

Justice M.S. Sullar, Member (J)

Seemingly, the instant Original Application (OA)", has a
very chequered history. However, the epitome of the facts and
material, which needs a necessary mention for the limited

purpose of deciding the core controversy involved in the instant OA and exposted from the record, is that, Applicant, Ct. Ranbir Singh and other police officials, mentioned therein were the members of the special checking staff. They have illegally detained the complainant, Subash Chand, his two employees and released them after receipt of an amount of Rs.30,000/- (Rupees Thirty Thousand only) as illegal gratification/bribe money. Thus, they were stated to have committed the grave misconduct in discharge of their official duty. Accordingly, they were dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"). A Departmental Enquiry (DE) was initiated against them vide the impugned order dated 16.05.1995 and the Enquiry Officer (EO) was appointed, by the competent authority.

2. As a consequence thereof, EO recorded the evidence and after following the due procedure of enquiry, under the D.P. Rules, issued the following summary of allegations:-

"On 23.04.1996 one Nanhe Mal R/o. D-365, Gali No. 20, Shajan pura, Delhi made a complaint alleging therein that officials of the North East Distt. Special Staff incensing SI Net Ram No. 1451/D, ASI Jaya Ram No. 4577/D, Ct. Ranbir Singh No. 723/NE and Ct. Jatan Bir No. 1158/NE that they picked up forcibly one Subhash Chand, with his two servants namely Krishan Kumar and Chander Pal from their cold Drinks shop. The officials of special staff/NE accused them of manufacturing and storing (sic) spurious cold drinks and recovered 70 crates of cold drinks including a three wheeler scooter bearing registration (sic) No. DL-IL-3428. Shri Subhash Chand was threatened to be involved (sic) in false criminal cases if he does not pay a sum of Rs.50,000/- as illegal gratification. The complainant along with (sic) servants were detained for more than 20 hours. The officials of special staff/NE allegedly also beat them (sic). It was found that a false D.D. No.11 dt. 10.25 p.m. was lodged on 15.4.96 mentioning therein that the special staff party had checked one tempo carrying cold drinks brought them to the Spl. Staff office for verification and than let them off (sic). The officials of special staff detailed the complainant and his servants unauthorisedly (sic) and wrongfully for obvious reasons. They kept 11 crates of cold drinks and

returned 59 crates to the complainants while releasing Subhash and others along with three wheeler after realization of amount of Rs.30,000/- the officials of special staff let him off after accepting Rs.30,000/- from the father of Shri Subhash Chand.

It has been established that there was slack supervision of Inspr. Mohan Chandra, I/C special staff/NE Distt. The officials of Special staff could not have done this illegal activities without his connivance.

The above mentioned acts of Inspr. Mohan Chandra, No. D-I/520, SI Net Ram No. 1415/D, ASI Jiya Ram No. 4577/D Ct. Ranbir Singh No. 723/NE and Ct. Jatan Bir Singh No. 1158/NE Amount to grave misconduct, negligence, carelessness, remissness and dereliction in the discharge of their official duties and unbecoming of police official in violation of Rule I, II and III of the C.C.S (Conduct Rules), 1978 which renders them liable for departmental action under the provisions of Delhi Police (Punishment & Appeal Rules, 1980)."

3. In pursuance thereof, the applicant denied all the allegations alleged against him and he made his defence statement. He has put up a defence on 15.04.1996 that he was busy with IO Devinder Singh in investigation of a Gambling case, vide FIR No.99/96 u/s 12/5/99 of the same Police Station, Welcome, Delhi. He has also produce defence evidence to prove his defence.

4. However, the EO appreciated the entire evidence, negated the defence and concluded that the charges framed against the applicant and other co-delinquents, stand fully proved, vide impugned enquiry report dated 05.08.1997 (Annexure A-4).

5. Concurring with the findings of the EO, considering the evidence on record, a penalty of dismissal from service was imposed on the applicant vide impugned order 07.11.1997 (Annexure A-1) by the Disciplinary Authority (DA). Similarly, the appeals filed by the applicant and others were dismissed, vide impugned order dated 11.03.1998 (Annexure A-2) by the

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Appellate Authority (AA). The joint Revision Petitions filed by them was also dismissed, by way of an order dated 11.02.1999 (Annexure A-3) by the Lt. Governor (Revisional Authority).

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned enquiry report and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. Sequelly, the case set up by the applicant, in brief, in so far as relevant, is that, the enquiry is vitiated on the ground of violation of Rule 16 of D.P. Rules. The EO has not properly considered the prosecution and defence evidence. He has reached his conclusion, on the basis of interested and insufficient evidence. Applicant was deprived from effective cross-examination of the witnesses and reasonable opportunity to prepare the defence. The EO has assumed the role of a prosecutor and cross-examined the defence witnesses. There was no prior approval of Additional Commissioner of Police, for initiation of the enquiry, under Rule 15 (2) of D.P. Rules. It was pleaded, that the joint summary of allegations issued to the applicant and other police officials, were vague and lack in material particulars, which has caused great prejudice to his case.

8. The case of the applicant further proceeds, that he has given a plausible defence to prove that he was busy in the investigation of a criminal case along with Sub Inspector

Devender Singh, which is clear from DDR entries of his arrival and departure. The said defence was not at all taken into consideration by the EO. Even PW-4 Nanhe Mal had not duly identified the charged official, during the course of enquiry. The findings of the EO, were stated to be based on no evidence and on conjecture and surmises. He (applicant) has been punished on the basis of suspicion only. The EO, DA, AA and RA have not considered the evidence on record, and have not gone into his defence, that he was busy in the investigation of a criminal case under the supervision of SI Devender Singh. It was alleged that observation of DA that the DDR entries are false, is not based on record.

9. Levelling a variety of allegations, and narrating the sequence of events, in all, the applicant claimed that the impugned enquiry report and orders are perverse, based on no evidence, arbitrary, illegal, against the statutory provisions, principles of natural justice and without jurisdiction. On the strength of the aforesaid grounds, the applicant has sought quashing of the enquiry report as well as the impugned orders, in the manner indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant, and filed their reply, wherein it was pleaded as

 under:-

"A joint Departmental Enquiry was ordered against Inspector Mohan Chander, No.D-I/520, SI New Ram No.1415/D, ASI Jiya Ram No.4577/D, Ct. Ranbir Singh No.723/HC and Ct. Jatanbir Singh No.1158/NE by Additional Commissioner of Police, New Delhi Range, New Delhi vide his Office Order No.3094-3108/P.Cell/Vig.(P-II) dated 16.05.1996 on the allegation that on 23.04.1998 one Nanhe Lal R/o D-

865, Galoi No.20, Bhajanpura, Delhi-110053, made a complaint alleging therein that officials of the North East District, Special Staff including SI Net Ram, ASI Jia Ram, Ct. Ranbir Singh and Ct. Jatanbir Singh forcibly picked up one Subhash Chand with his two servants namely Krishan Kumar and Chnder Pal from their Cold Drinks shop. The officials of special staff North East District accused them of manufacturing and storing spurious cold drinks and recovered 70 crates of cold drink including a three wheeler scooter bearing registration No.DL-1L-3428. Shri Subhash Chand was threatened that he would be involved in false criminal cases if he does not pay a sum of Rs.50,000/- as illegal gratification. The complainant along with his servants was detained for more than 20 hours. The officials of special staff, North East District allegedly also beaten and misbehaved with them. The complaint was enquired into by Shir Kishan Kuman the then DCP/North East District, who found the allegations levelled against the officials of special staff, North East District to be correct. It was found that a false D.D. No.11 at 10.25 p.m. was lodged on 15.4.96 mentioning therein that the special staff party had checked one tempo carrying cold drinks brought to the Special Staff office for verification and then let them go. The officials of special staff detailed the complainant and his servants unauthorisedly and wrongfully for obvious reasons. They kept 11 crates of cold drinks and returned 59 crates to the complainants while releasing Subhash and others along with three wheeler after realization of amount of Rs.30,000/-. The officials of special staff, North East let them off after accepting Rs.30,000/- from the father of Shri Subhash Chand.

It was established that there was slack of supervision of Insp. Mohan Chander, the then Incharge, special staff, North East Distt. The officials of Special staff could not have done this illegal activity without his connivance.

The Enquiry Officer completed the departmental enquiry proceedings and submitted his finding concluding therein that the charge of lack of supervision and not taking timely corrective action only against Inspector Mohan Chandra, No. D-I/520 is proved but the charge against SI Net Ram No. 1415/D, ASI Jiya Ram No. 4577/D, Ct. Ranbir Singh No. 723/NE and Ct. Jatan Bir Singh No. 1158/NE regarding harassing and demanding money are certainly proved. Copy of the finding was served upon all the defaulters including applicant vide PER's U.O. No.6606/P.Cell/Vig.(P-II) dated 21.08.1997 and also show cause as to why his suspension period should not be treated as not spent on duty vide PHQ's U.O. No.6607/P.Cell/Vig.(P-II) dated 21.08.1997. The additional Commissioner of Police/NE (who is Disciplinary Authority in this departmental enquiry) after carefully going through the departmental enquiry file, written representation and other material available on record and after hearing in OR finalized the said departmental enquiry and the punishment of dismissal was awarded to the applicant vide No.10398/416/P.Cell/Vig.(P-II) dated 07.11.1997. The applicant went in appeal to Commissioner of Police, Delhi, who considered the same and rejected vide PHQ's Order No.F.16/19/98/6066-71/OR-I dated 11.03.1998. Thereafter, the applicant filed a revision petition to the Hon'ble Lt. Governor of Delhi. The reviewing authority also considered it at length and rejected the same vide order dated 11.02.1999".

11. Virtually acknowledging the factual matrix and reiterating the validity of the impugned enquiry report and orders, the respondents have stoutly denied all other allegations and grounds contained in the main OA, and prayed for its dismissal.

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12. Controverting the allegations contained in the reply of the respondents and reiterating the grounds taken in the OA, the applicant filed his rejoinder.

13. It will not be out of place to mention here that the present OA was initially dismissed, vide order dated 05.04.2002 by this Tribunal. The order reads as under:-

“18. We have already seen that the OAs filed by Ex. SI Net Ram and Ex. ASI Jiya Ram against their joint disciplinary proceedings have been dismissed by two separate Division Benches of this Tribunal. Nothing has been shown to us to establish that the Tribunal's order in those two OAs have been stayed, modified or set aside, and no good grounds have been advanced by applicant's counsel to warrant any conclusion different from what has been taken by those two Benches. In the result the present O.A warrants no interference and the ruling of the Andhra Pradesh High Court in M. Yusuf Ali Vs. State of AP 1978 (1) SLR 650 cited by applicant's counsel does not help the applicant in the present OA as the facts and circumstances of the present case are quite different and hence distinguishable.

19. The OA is therefore dismissed. No costs.”

14. However, in pursuance of RA bearing No.114/2002, the order was recalled and the OA was ordered to be listed for hearing through an order dated 24.10.2002 of this Tribunal.

15. Thereafter, the main OA was allowed. Matter was remitted back to DA for fresh enquiry, by virtue of an order dated 29.01.2003, by a Co-ordinate Bench of this Tribunal, which in substance is as under:-

“18. Hence, we are of the considered opinion that the order initiating disciplinary enquiry is itself bad because the disciplinary authority could not have initiated the same without obtaining prior approval of the Additional Commissioner of Police this the order initiating the inquiry is quashed and set aside. The matter is remanded back to the police authorities. They may hold a fresh enquiry after obtaining the prior approval of the Additional Commissioner of Police and in case they choose so, the same may be completed within a period of 6 months the date of receipt of a copy of this order.

19. OA is disposed of with the above directions. No costs.”

16. Dissatisfied thereby, the respondents-Union of India and Others filed **Writ Petition (C)** bearing **No.6026/2003**, which

was accepted and the order dated 29.01.2003 of this Tribunal was quashed by a Division Bench of Hon'ble Delhi High Court, by virtue of judgment dated 24.07.2006. The operative part of the order, is in the following terms:-

"11. In order to satisfy ourselves whether in the present case there was compliance of Rule 15(2) of the Rules, the petitioners were called upon to produce the relevant records for perusal of this Court. The petitioners produced the same and on examination we find that the departmental enquiry was directed by Additional Commissioner of Police (Range), New Delhi vide order dated 16.05.1996. The said Order is fairly detailed and also gives reasons as to why departmental proceedings should be initiated against the respondent and the three other officers. It is, therefore, clear to us that the departmental proceedings were initiated only after prior approval of the Additional Commissioner of Police. We have not been able to appreciate and understand why and how the learned Tribunal came to a contrary finding. It may be stated here that another constable Mr. Jatanbir Singh was also charge sheeted and proceeded against departmentally along with the respondent. A similar contention was raised by him in OA No.2157/2000 before the learned Tribunal. However, the said contention was rejected, inter alia, holding that once departmental proceedings were initiated by the Additional Commissioner of Police, there was no violation of Rule 15(2) of the Rules. We feel that Additional Commissioner of Police was not required to pass a separate orders for prior approval and for initiation of departmental enquiry. When Additional Commissioner of Police after examining the facts on record directed initiation of departmental enquiry/proceedings, it can be said that the said proceedings had been initiated with his prior approval. Prior approval is implicit.

12. In view of the above, the present Writ Petition is allowed and the impugned Order dated 29.07.2003 is quashed and set aside. It is held that Rule 15(2) of the Rules has not been violated. No order as to costs".

17. Therefore, in this manner, the order dated 29.07.2003 of this Tribunal was set aside by means of judgment of Division Bench of Hon'ble High Court dated 24.07.2006 in **W.P. (C) 6026/2003**. However, it remained an unfolded mystery and unexplained by the learned counsel for applicant, that how and in what manner and against which order, he has subsequently filed **Writ Petition (C) No.4834/2007** and High Court directed this Tribunal to re-examine the matter specially in the light of documents/copies of which were annexed, along with the application filed in the year 2001, in support of his defence in

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the case, that there was no involvement in the alleged incident, vide order dated 27.11.2014. That is how we are seized of the matter.

18. Having heard the learned counsel for the parties at quite some length, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that there is no merit, and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

19. Ex-facie, the arguments of learned counsel, that there is no evidence on record to connect the applicant with the alleged charge, since the EO has based his findings on the basis of contradictory evidence, surmises and conjectures, so the impugned orders of DA, AA and RA based on it, are arbitrary and illegal, is not only devoid of merit but misplaced as well.

20. As indicated hereinabove, all the grounds contained in this OA were duly considered and negated, and OA was initially dismissed, vide order dated 05.04.2002 by this Tribunal. However, in the wake of RA, the said order was recalled, by way of an order dated 24.10.2002, by this Tribunal.

21. Not only that, all these issues were again considered, negated, and the matter was remitted back to the police authority for fresh enquiry, only on a limited (technical) ground of violation of Rule 15(2) of D.P. Rules, vide order dated 29.01.2003 by this Tribunal. However, this order was set aside

by Division Bench of Hon'ble Delhi High Court vide judgment dated 24.07.2006 in **Writ Petition (C) No.6026/2003**, wherein it was ruled that there was no violation of Rule 15(2) of D.P. Rules.

22. Meaning thereby, all the grounds contained in the present OA were duly considered and negated twice by this Tribunal and then by High Court in the manner discussed hereinabove. Hence, the applicant is estopped and barred from again and again re-agitating the same very grounds, in the wake of analogy of constructive *res judicata* as envisaged under Explanation IV of Section 11 of The Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC"). Moreover, Explanation V of Section 11 postulates that "any relief claimed in the plaint, which has not expressly been granted, shall, for the purposes of this section, be deemed to have been refused" by the courts.

23. Such this being the position on record, now the controversy involved in the instant OA falls within a very narrow compass. We have to consider the matter only in the light of directions contained in the order dated 27.11.2014 in **W.P. (C) No.4834/2007** of Hon'ble Delhi High Court and not otherwise.

The operative part of which is as under:-

"14. In view of the forgoing discussion, we are of the opinion that the CAT should examine the merits of the case, specifically in the light of the documents, copies of which were annexed along with the application filed in 2001 and any other relevant certified copy, which may be produced by the petitioner, in support of his case that there was no involvement in the alleged incident but he was rather a part of the team headed by S.I. Devender Singh - DW-12 which culminated in F.I.R. No.99/96 and conviction of the accused in that case, i.e. Nawab and Shakeel Ahmed.

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15. The impugned order is, accordingly, set aside. The parties are directed to be present before the CAT on 08.12.2014, which will proceed to hear the merits of the O.A. No.2000/2000 in the light of the above directions. The CAT shall endeavour to complete the proceedings and render the judgement at its earliest convenience considering that the petitioner has been out of employment for the past seventeen years. It shall endeavour to pass final orders within four months from today. In view of the above, the impugned order dated 29.01.2003 is hereby quashed.

16. The writ petition is allowed in the above terms".

24. That being the position on record, the learned counsel for the applicant has invited our attention towards the MA and the documents attached therein in the shape of DDR Entries No.14A and 16A dated 15.04.1996, copy of FIR/police report dated 15.04.1996 in criminal case No.99/96 u/s 12/5/99 of Gambling Act, copy of site plan, copy of recovery memo, search memo, statements of Devender Singh, applicant (Ranbir Singh), Rampal Singh, Sudhir, Krishanpal Singh, Nanhe Mal, Subhash Chand, Vinod Kumar recorded under Section 161 of Criminal Procedure Code, 1973 (for short "Cr.PC") and conviction slip etc. (available at pages 182 to 217).

25. In this regard, learned counsel has contended with some amount of vehemence, that from these documents, it stands proved on record that the applicant was member of the investigation team headed by ASI Devender Singh in a criminal case registered against the accused, vide FIR No.99/1996 in the Gambling Act and was not involved in demanding or accepting the bribe money by other police party, headed by Net Ram.

26. At the first instance, the arguments appeared somewhat attractive, but when the same were deeply analysed with regard

to the real controversy between the parties, pointed material on record and the legal position, then we cannot help observing that these submissions of learned counsel are also not tenable and deserve to be ignored for more than one reasons.

7 27. At the first instance, no implicit reliance can be placed on the indicated documents, i.e., DDR entries, recovery memo etc. and the statements recorded by the police u/s 161 Cr.PC during the course of investigation of a criminal case, in view of complete legal bar as contemplated u/s 162 Cr.PC, which posits that "No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it, **nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided.** In other words, such statements/documents can only be used to contradict the statements of the witnesses in the trial of that very particular case and otherwise cannot be used for any other purpose in the present case.

28. Secondly, a bare perusal of record would reveal that very specific and glaring allegations are attributed that applicant along with other delinquent officials were members of the special checking staff and forcibly picked one Subhash Chand, with his two servants, namely, Krishan Kumar and Chander Pal from their cold Drinks shop on 15.04.1996 on the ground, that

they were manufacturing and storing spurious cold drinks and recovered 70 crates of cold drinks including a three wheeler scooter. Shri Subhash Chand and his two servants were threatened to be involved in a false criminal case, if they failed to pay a sum of Rs.50,000/- as illegal gratification to them. They were illegally detained for more than 20 hours and were beaten by them. It was found that a false DDR No.11 at 10.25 p.m. was lodged on 15.4.1996 in this regard. They kept 11 crates of cold drinks, and returned 59 crates to the complainants, while releasing Subhash and others along with three wheeler scooter after realization of an amount of Rs.30,000/-, as illegal gratification/bribe money on the next day, i.e. 16.04.1996.

29. The prosecution, in order to substantiate the charges framed against the delinquent officials, examined PW-1 Ct. Jagbir Singh, who has proved the copies of DDR Nos.8 & 11 dated 15.04.1996 Exhibit PW-1/A and Ex/1/B respectively. PW-2, Shyam Babu S/o Shri Munshi Ram, PW-3 Dhoom Singh S/o Yad Ram, who have proved that the police party had taken crates of cold drinks from the shop of Subhash Chand on the relevant date.

30. The next to note is the testimony of PW-4 Nanhe Mal S/o Ram Chander who has maintained as under:-

“PW-4 Nanhe Mal S/o Ram Chander R/o D-865, Gali No.20, Bhajanpura, Delhi. He stated that he is residing at given address. The police persons present during DE proceedings, had come to the shop of Subhash on 15.04.1996 at 07.00 PM. They asked Subhash that the campa lying there was duplicate who told the police personnel that he had company bills of these bottles. They did not pay heed to this and insisted that we should

Subhash

accompany them. Thereafter, they had come to his house along with Subhash Chand, Krishan Pal (servant) and Chander Pal (driver). He questioned the police personnel regarding the raid. He further asked them to contact Sri Ram House to get the campa tested from there. Thereafter, the police persons had gone away after taking 70 dalas and all the three persons and three wheeler and asked them to come at Seelampur to see their Sahib. At about 8.00 PM. They reached Seelampur, where police persons asked them for some money for releasing their persons. He told them that their campa is original and they would not pay any amount to them. On this Ratanbir/Jatanbir started beating Krishan Pal with Dandas (sticks), saying that money would come in this way. They said that he is not a thief or decoit why they are being harassed. At about 1.30 PM police persons finally asked them to pay Rs.50,000/- for the release of their persons otherwise they would not release. On hearing this and beating their persons they returned to their house. Thereafter, they thought about and what should be done by them. Finally they dialled 100 number and asked the telephone number of Shri Nikhil Kumar at 2.50 AM mentioning therein that their persons should be medically examined and enquiry be conducted. They were unable to pay Rs.50,000/-. On 16.04.1996 at about 10/11 AM staff of Seelampur again came to them. He said to challan of their persons, they would be released on bail from the court. Thereafter, they told that Lala whatever you spent on bail in the court, the same amount be given to them. Finally, the matter was settled to the tune of Rs.30,000/-. He handed over the key of trunk to his grant son Rakesh Kumar and directed him to take out Rs.30,000/- from the trunk. The same amount was handed over to Net Ram, Jiya Ram, Ranbir and Jatan Bir, who were sitting inside. Inspite of that they had kept 11 Dalas for drinking. At about 3.30 PM after getting release of their persons and remaining campa cola crates they came back to the house. After 4 days Ranbir came to his house and asked house number. That is why he made a call to Shir Nikhil Kumar, who informed that the copy of his telegram has been sent to Sh. Dadwal Sahib. He met Sh. Dadwal Sahib who passed some orders on the photocopy of telegram and sent two police personnel with them with the direction to meet DCP Sahib for enquiry. Due to the busy schedule of DCP/NE I could not get appointment and was asked to come after two hours. They came back to their house. In the mean time all the four police persons reached their house and asked to take his money back. All the discussions held in this regard was recorded by him (Nanhe Mal). On that day he could not got his statement recorded by DCP/NE. All the four police personnel were remained present in his house till 10.00 PM. On the next day i.e. on 24th he submitted an application to DCP/NE and identified them before DCP/NE. DCP recorded his statements as well as other persons including 2-3 Rehriwalas. Thereafter they came back to their house."

31. Similarly PW-5 Subash Chand S/o Nanhe Mal, PW-6 Krishan Pal S/o Shri Sri Chand, PW-7 Vinod Kumar S/o Shri Nanhe Mal and PW-8 Rakesh Kumar S/o Shri Janehswar Das, examined by the prosecution fully supported its case. Instead of reproducing the entire contents of their statements, and in order to avoid repetition, suffice it to say that they have fully corroborated the statement of PW-4 and the grave misconduct

of the applicant which formed the basis of the charge sheet on all vital counts.

32. Having recorded the statement of prosecution witnesses, defence statements of applicant (Annexure A-8) was recorded by EO, wherein he has projected, that he was a member of investigation team headed by ASI Devender Singh and was busy in investigating the case bearing No.99/96 u/s 12/9/55 of Gambling Act of the concerned Police Station, PS Welcome, Delhi. He made DDR entries No.14A & 16A dated 15.04.1996 in this regard. He feigned ignorance about the incident in question. Even DW-1 to DW-7 & DW-9 have acknowledged the checking of cold drinks of Subash Chand by the special staff of Delhi Police, which supports the evidence of the prosecution.

33. Thus, it would be seen that it has come in the evidence of PW-4, that on 16.04.1996 at about 10.11 AM, the charged officials including the applicant came to them and finally matter was settled to the tune of Rs.30,000/-. He has specifically stated that he handed over the key of trunk to his grand son Rakesh Kumar and directed him to take out Rs.30,000/- from the trunk. The amount was handed over to Net Ram, Jiya Ram, applicant (Ranbir) and Jatin Bir while they were sitting inside.

34. Meaning thereby, there is a positive evidence on record, that on 16.04.1996 at 10.11 AM, applicant along with other charged officials have actually received an amount of

Rs.30,000/- as illegal gratification/bribe money from the complainant and released the accused after illegal detention.

35. Now advertng to the main argument of the learned counsel, that the DD entries No.14A and 16A dated 15.04.1996 (authenticity of which is very doubtful in the absence and loss of original record) and other indicated documents (available at pages 182 to 217) pertaining to the investigation of some other case vide FIR No.99/96 under Gambling Act at PS Welcome, will not come to the rescue of the applicant in the present controversy. A bare perusal of the record would reveal that all these two DDR entries, FIR, site plan, disclosure statements of the witnesses recorded under Section 161 of Cr.PC pertained to 15.04.1996, whereas specific allegations against the applicant are that he along with other delinquent officials came to PW-4 at 11.10 AM on 16.04.1996 and received the bribe money. The applicant has not produced any document, even to suggest remotely that he remained busy in any manner throughout the day in the investigation of indicated criminal case, particularly when the specific case of the prosecution (PW-4) is that applicant and his other co-delinquents came to him at 11.10AM on 16.04.1996 and had taken an amount of Rs.30,000/- as illegal gratification and released the detenu, after accepting the bribe money.

36. This is not the end of the matter. The only defence plea projected by the applicant is that he was busy with main IO

Devinder Singh for investigation of indicated criminal case under the Gambling Act on 15.04.1996. It cannot possibly be denied that the entire investigation of a minor offence under the Gambling Act was not a big deal which could be said to have engaged the investigation team headed by ASI Devinder Singh on the relevant date, whereas a bare perusal of evidence on record as depicted hereinabove, would reveal that the applicant and his co-delinquents demanded and accepted bribe money at 10.11 AM on 16.04.1996. In fact, the entire investigation of the pointed minor criminal case, under the Gambling Act, indeed was completed on 15.04.1996 in all respects. In that eventuality, it cannot possibly be saith that applicant was busy in the investigation of gambling case on 16.04.1996, as claimed on his behalf. Above all, the applicant has miserably failed to produce any evidence, much less cogent, even to suggest remotely that he was busy in the investigation of a gambling case with ASI Devinder Singh at the relevant time on 16.04.1996.

37. Therefore, assuming for the sake of argument (though not admitted), if the applicant was a member of investigating team headed by ASI, Devender Singh on 15.04.1996, as projected on the basis of indicated documents, ipso facto, is not a ground, much less cogent, to exonerate him from his specific charge, that he along with his other co-delinquents has received Rs,30,000/- as bribe money from PW-4 on 16.04.1996 and

released the detenu. Hence, the contrary arguments of the learned counsel for the applicant, "*stricto-sensu*" deserve to be and are hereby repelled, under the present set of circumstances.

38. Thus it would be seen that there is sufficient oral as well as documentary evidence on record to prove the guilt of the applicant. The indicated documents of investigation of criminal case under the Gambling Act are irrelevant to decide the real controversy between the parties and would not come to the rescue of the applicant in the present controversy for the reasons discussed hereinabove. The EO has considered and rightly appreciated the evidence of prosecution as well as defence evidence. Hence, the contrary argument of learned counsel of the applicant that there is no evidence on record, is not tenable as well.

39. Moreover, it is now well settled proposition of law that the provisions of Evidence Act are not strictly applicable in case of Departmental Enquiry, as applicable in criminal trials. The EO was required to decide the real controversy between the parties, on the Doctrine of preponderance of probability of the evidence.

40. Therefore, if the crux of the evidence of the parties produced during the inquiry is put together, then the conclusion is inescapable that charges framed against the delinquents during the course of inquiry stands fully proved.

Sub The IO has appreciated, evaluated the evidence of the parties in the right perspective and discussed the evidence produced by

the parties in detail. Thereafter, he came to the definite conclusion that the charges are proved. Learned counsel has failed to urge any other illegality in the impugned enquiry report.

41. Consequently, in the absence of any procedural illegality and irregularity, in conduct of DE, no ground, much less cogent to interfere with the impugned orders is made out, in view of law laid down by Hon'ble Apex Court in the case of **Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620**.

42. Meaning thereby, the DA has rightly passed the impugned order dealing with all the contentions raised by the applicant in the right perspective in the impugned order (Annexure A-1), which, in substance, is as under:-

"At the end, I would like to refer to contention no. 25 in which the co-defaulters have stated that what has been alleged against them does not tantamount to misconduct which according to them means involving some form of guilty mind or mensarea. In contention no. 27, they state that the defence version is more probable than the prosecution. In the instant case, the co-defaulter SI Net Ram has stated that in course of patrolling, he received information that a three wheeler tempo was supplying spurious campa cola and other drinks in Gagan Vihar. On this information, SI Net Ram and party including the defaulter rushed to Gagan Vihar where they found a three wheeler which was checked. First and foremost, the very action of the police going about searching for a tempo containing allegedly spurious soft drinks is mala fide in nature. Even if, for argument sake, spurious soft drinks were being sold, it constitutes an offence under the trade and merchandise marks act, 1958 the relevant provisions of which are non-cognizable. The police could not in any case have taken action suo-moto in this regard. Presuming that the police did not know that and were under the bona fide belief that they could take action legitimately, then if the information was so reliable it is indeed surprising that the police did not bother to even record the name of the driver or the three-wheeler number in the roznamcha (sic) and take at least one bottle as a sample for checking on the basis of which a case could have been registered later-on. After all, what is the sanctity of checking the papers as a fraudulent supplier can always appear (sic) genuine papers regarding certain amount of crates and under the cover of this sell any number of duplicate crates of the same drink. This itself indicates the mala fide intentions of the defaulter and the police party. Thereafter according to DD No. 11, after making a spot inquiry, the police party let the tempo proceed and returned to them by the (sic) staff office. However, the testimony of defence witnesses produced by the co-

But

defaulters themselves (DW-2, DW-3 and DW 13) have indicated that the police party went to the shop of Subhash Chand and loaded crates of campa cola at about 7.00/7.30 p.m along with servant namely Krishan Pal which returned to the shop at or about 9.30/10.00 P.M. This itself groves that DD No. 11 has been falsely recorded. In addition to this, we have impeccable testimony of PW-4 based (sic) to by the PW-7 and also by PW-2, PW-3 and PW-8.

Besides the 28 contentions mentioned in para-4 of his representation, the defaulter has referred to his departure at 5.30 P.M vide DD No. 7 with SI Devender Singh and party returned vide DD No. 9 at 10.15 P.M he also referred to registration of case FIR No. 99/96 u/s 12/9/55.G. Act P.S. Welcome at 3.45 P.M. According to rule 22.49 (c) PPR-1924 all police officers are required to mark arrival (sic) and departure reports personally by signature. In the instant case, the signature of the defaulter const. does not appear in DD Nos. 7 and 9 of 15.04.96 vide which he claims to have made his departure and arrival alongwith SI Devender Singh and party. The defaulter Const signature appear in DD No. 14-A at P.S. Welcome at 8.45 P.M. regarding registration of case. However, his signature do not figures in the arrival of SI Devender Singh and party after investigation at P.S. Welcome vide DD No. 16-A at 10.09 P.M on 15.4.1996. As stated earlier I attach little sanctity to daily diary entries considering the electricity with which false DD entries are made. I see no reason to disbelieve PW-4 who has clearly named and identified the defaulter. Lastly, the defaulter has taken the plea that a copy of the cassette mentioned by PW-4 was not supplied despite the application given on 9.9.97. First and foremost, the cassette is not a part of the DE proceedings, not relied upon by the prosecution, the question of supplying did not arise. Further, the cassette was not produced by PW-4 and he should have done so regarding the cassette. Finally, neither in the finding nor in the present order have had the existence of this tape been given any weight whatsoever.

As far as beatings are concerned, since the victim have turned hostile, no medical examination was conducted and PW-4 is not an eye-witnesses, I was (sic) given the benefit of doubt to the defaulter.

After careful consideration, I finding that the charge has been adequately proved against the defaulter. This is a case in which despite having no legal authority, the police illegally checked the tempo in question. Thereafter a raid was conducted at PW-5's shop and crates of soft drink/tempo were taken to the special staff office along with PW-5 and two servants. Thereafter a false daily diary entry was recorded. PW-5 and his two servants were illegally detained for about 2000 hours and finally let off on receipt of Rs.30,000/- from PW-4. Police Officers are expected to uphold the law and provide succour (sic) to the people in distress. They cannot act likely highway men and expect (sic) that their acts of sheer criminal be overlooked merely because they acted under the power (sic) of their duties. Such acts of extortion and illegal abuse of power, on the contrary, should be visited with the charge sheet possible punishment as the perpetrators are not ordinary criminals but policemen. The retention of such individuals (sic) in the force would send wrong signals encouraging corruption and gross misconduct on one hand and would be fraught with dangerous consequences for the public on the other. Such individuals are, undoubtedly, unfit to continue as police officers.

After careful consideration, I Yudhbir Singh Dadwal, Addl. Commissioner of Police, New Delhi Range, hereby award the punishment of dismissal from service with immediate effect to Const. Ranbit Singh No. 723/NE for the act of grave misconduct rendering him unfit for police

service. I have also gone through the reply to the show cause notice given to him for treating his suspension period as period not spent on duty. The pleas taken by the defaulter have not force. I have gone through the reply to the show cause notice given to him for treating his suspension period as period not spent on duty. The pleas taken by the defaulter have no force. I have gone through the facts and circumstances of the cases which he has mentioned in his reply. The facts of the citations are not similar to the instant case. In view of above, the suspension period of Const. Ranbir Singh No. 723/NE w.e.f.21.04.96 to the date of issue of this order is hereby treated as period not spent on duty for all intents and purpose.

43. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Admittedly, applicant, Ranbir Singh and his co-delinquents, namely, Net Ram and Jiya Ram were jointly charge sheeted for the pointed grave misconduct. The EO has held applicant and other co-delinquents Net Ram and Jiya Ram guilty. After taking into consideration, the entire evidence on record and concurring with the same findings of the EO, the competent authority dismissed them from service. The appeal filed by them was also dismissed on 11.03.1998 by the AA. Similarly, the Revision Petition filed by them was rejected by speaking order, by way of order dated 11.02.1999 by the Lt. Governor (Revisional Authority).

44. What cannot possibly be disputed here is that OA bearing No.1602/1999 filed by SI Net Ram was dismissed vide order dated 07.12.2000, whereas OA No.1844/1999 filed by ASI Jiya Ram was dismissed vide order dated 12.09.2001 by this Tribunal. No material, much less cogent was brought on record or urged by learned counsel for the parties, to show that the aforementioned orders of this Tribunal dated 07.12.2000 and

12.09.2001 have been stayed, modified or set aside. Since the identical controversy and issues have already been decided by Co-ordinate Benches of this Tribunal, so we are not inclined to take a different view as has already been taken in cases of similarly situated police officials Net Ram and Jiya Ram, who were co-delinquents with the applicant, in view of principle of *stare decisis*.

45. Having completed all the codal formalities and taking into consideration the entire evidence on record, the DA has considered all the relevant factors while imposing the punishment of removal from service to the applicant vide order dated 07.11.1997 (Annexure A-1). Likewise, the AA has also considered all the issues and upheld the punishment order and rejected the appeal of the applicant vide impugned order dated 11.03.1998 (Annexure A-2). Similarly, the revision filed by them was dismissed vide order dated 11.02.1999 by the Lt. Governor (Revisional Authority). They have passed reasoned orders. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case, in view of the ratio of law laid down by Hon'ble Apex Court in the cases of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** and **K.L. Shinde v. State of Mysore, (1976) 3 SCC 76**.

46. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

47. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

V.N. Gaur
(V.N. GAUR)
MEMBER (A)

Mehum Singh Sullar
(JUSTICE M.S. SULLAR)
MEMBER (J)
24.08.2016

Rakesh