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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.1707/1987

Date of decision:04.09.1992.

Shri Bhim Singh & Another

...Applicant

Vs.

Union of India & Others

...Respondents

For the Applicants

...Shri Shankar Raju,
Counsel

For the Respondents

...Shri Jagdish Vats,
Counsel.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K.
Karttha, Vice Chairman(J))

The two applicants before us who have worked as Constables in the Delhi Police are aggrieved by their removal from service by impugned order dated 31.1.1986 after holding a departmental enquiry against them under Section 21 of the Delhi Police Act, 1978. *~* **for quashing the impugned orders and** *~* They have prayed for their reinstatement with all consequential benefits.

2. The charges brought against the applicants
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were as under:-

1st Applicant (Bhim Singh)

" I, Amrik Singh, Assistant Commissioner of Police, Kamla Market, Central District, Delhi do hereby charge you constable Bhim Singh No.581/C in that while posted at P.S. Karol Bagh on the night of 3/4.9.84, you were detailed as night Roznamcha Munshi from 12 night to 8.00 A.M. Constable Dalel Singh No.1001/C (M/C driver) brought one Shri Jagdish Lal Verma S/o Shri Lala Ram, R/o 8545, Arakashan Road, behind Shiela Cinema, Paharganj, Delhi along with his two sons, namely, Pradeep Kumar and Dinesh Kumar from Link Road, Chembry while they were returning after attending the marriage party at Patel Nagar at about 11 PM Shri Jagdish Lal Verma was threatened at PS to be put behind the bars and was further threatened with the seizure of his scooter by Constable Dalel Singh. You posed yourself as duty officer and pressed Shri Jagdish Lal Verma to give some money to Constable Dalel Singh for 'CHAI-PANI' in consideration for allowing them to go home. Thus, you and constable Dalel Singh extracted Rs.70/- from him and thereafter allowed them to go".

2nd Applicant (Dalel Singh)

" I, Amrik Singh, Assistant Commissioner of Police, Kamla Market, Delhi do hereby charge you Constable Dalel Singh No.1001/C (M.C. Rider) in that while posted at P.S. Karol Bagh on 3/4.9.1984 after performing evening patrolling duty from 6 PM to 10PM, you went to Link Road Chamber without any departure in Daily Diary. At Link Road Chambry you stopped one Jagdish Lal Verma S/o Shri Lala Beli Ram, R/o 8545, Arakashan Road behind Shiela Cinema, Paharganj, New Delhi, who was returning home in his two wheeler scooter No.DHV 2221 along with his two sons, namely, Pradeep Kumar and Dinesh Kumar after attending a marriage party at Tilak Nagar at about 11 PM you asked for driving licence from Shri Jagdish Lal Verma and brought them to PS Karol Bagh where he was threatened to be put behind ~~the~~ bars and also with seizure of his scooter by you. Constable Bhim Singh No.581/C who was detailed as night Roznamchas Munshi from 12night to 8 AM in collusion with you posed himself as duty officer advised Shri Jagdish Lal Verma to give some money to you for 'CHAI-PANI' and in this way, you along with Ct. Him Singh extracted Rs.70/- from him and thereafter they were allowed to go".

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3. The applicants/challenged the impugned orders of removal from service passed by the disciplinary authority and upheld by the Appellate and Revisional Authorities on a variety of grounds. The respondents have sought to justify the action taken by them and have refuted the contentions

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put forward by the applicants. We have gone through the records of the case carefully and have heard the learned counsel for both parties. We have also perused the relevant files dealing with the enquiry conducted against the applicants.

4. The first applicant (Shri Bhim Singh) was appointed as a Constable on 1.6.1957 in the Delhi Police by Senior Superintendent of Police (SSP) exercising the powers of DIG of Police. He was confirmed as Constable in 1960 by the DIG of Police. The second applicant (Shri Dalel Singh) has stated that he was enlisted in Delhi Police on 13.09.1974 as Constable by the DIG of Police while the respondents have stated that he was appointed by the Commandant IIIrd Br. DAP, Delhi. The applicants have contended that the Deputy Commissioner of Police who functioned as the Disciplinary Authority was not competent to do so. They have further contended that they were denied copies of the statement of PWs in the preliminary enquiry on the ground that the gist of the statement had been supplied to them. The respondents have contended that the Deputy Superintendent of Police was competent to initiate departmental enquiry against the applicants. They have stated that the applicants were given reasonable opportunity to defend themselves in the enquiry though they have not specifically controverted the contention that the

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applicants were not given copies of the documents required by them for their defence.

5. It will be noticed that applicant No.1 (Shri Bhim Singh) was appointed as Constable in Delhi Police in 1957 while applicant No.2 (Shri Dalel Singh) was appointed in 1974. According to Notification dated 9.9.1963 issued by the Delhi Administration pursuant to Section 1 of the Police Act, 1861, the Chief Commissioner, Delhi appointed the officers enumerated therein to exercise all the powers and perform all the duties of a District Superintendent of Police under the said Act in the Union Territory of Delhi. The enumeration of officers includes the Superintendent of Police but not the Additional Superintendent of Police. By notification dated 18.5.1968, the earlier notification was amended so as to include, inter alia, the Additional Superintendent also in the list of officers appointed to exercise the powers and perform the duties of a Superintendent of Police. The subsequent notification dated 5/6-5-1976 enumerated the officers who were appointed to exercise the powers and perform all the duties of District Superintendent of Police. This also includes, inter alia, the Superintendent of Police, the Commandant and the Additional Superintendent of Police (Vide Lakhi Ram Ex-Constable Vs. Union of India & Others, 1989(3) SLJ (CAT) 321 at 327-328).

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6. In the instant case, the DIG of Police/SSP was the appointing authority of both the applicants at the relevant time in accordance with the provisions of the aforesaid notifications. Therefore, the Deputy Superintendent of Police was not competent to initiate departmental proceedings and impose punishment on them. It is well established that what is material for the purpose of Article 311(1) of the constitution is who actually appointed and not the competent authority who could have appointed the person concerned (vide Management of Delhi Transport Undertaking Vs. B.B.L. Hajelay and Another, 1972 SLR 787). In view of this, the Deputy Superintendent of Police could not initiate the proceedings against Applicant No.1 (Shri Bhim Singh) as he was appointed SSP exercising the power of DIG of Police. In the case of the second applicant (Shri Dalel Singh) the Commandant could exercise the powers and perform the duties of District Superintendent of Police only after the issue of notification dated 5/6-5-1976 but not in 1974 when he was actually appointed as Constable.

7. In the instant case, the **applicant** was not associated in the preliminary proceedings. He was given only a gist of the statements recorded in those proceedings. This is yet another lacuna in the departmental enquiry proceedings.

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8. In State of Punjab Vs. Shri Bhagat Ram, 1975(1) SLR 3 the Supreme Court observed that the trial court found the copies of the statements of the witnesses as recorded by the Vigilance Department during the preliminary enquiry were not supplied to the respondent but only the synopsis was given. The trial court, therefore, held that no reasonable opportunity was given to the respondent. The High Court also upheld the decision. On appeal to the Supreme Court, it was held that it was unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the enquiry in support of the charges against the Government servant. A synopsis or gist does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken and cross-examine the witnesses effectively.

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9. In the Deputy Managing Director (Technical),
Indian Airlines, New Delhi & Others Vs. W.B. Correya, 1978

SLJ 517, the statements of witnesses recorded in the preliminary enquiry proceedings of domestic enquiry were used in the regular enquiry without giving an opportunity to the witnesses to affirm or deny the same. The delinquent official was given an opportunity to cross-examine the said witnesses. Holding that the procedure followed was defective, detrimental and prejudicial to the delinquent official, the Madras High Court observed as follows:-

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"If the statement is not put to the witness and he had not given an opportunity to affirm the same as indicated above, there is in fact no evidence of that witness in the course of the chief-examination at all and it is very doubtful whether such a statement, notwithstanding copies thereof had already been furnished to the worker, can be used as substantive evidence against the worker concerned. It is this aspect of the matter which weighed with Ramanujam J. who held that the failure to put these statements to the witnesses and the witnesses not having affirmed their statements not having stated that they stood by their statements violated the principles of natural justice. No decision of any court was brought to our notice by the learned counsel for the appellants holding that this requirement need not be satisfied even in a domestic enquiry. On the face of it, the procedure followed by the Enquiry Officer is certainly defective, detrimental and prejudicial to the case of the respondent herein".

10. In J.K. Mishra Vs. Director General of Police and Others, 1981(2) SLJ 428
prior to the issue of charge-sheet, a preliminary enquiry was held behind the back of the charged official. The Calcutta High Court held that the delinquent must be supplied with the copy of the preliminary enquiry report and the copy of the evidence adduced.

11. In S.D. Dhardwaj Vs. Union of India & Others, *L*

the Himachal Pradesh High Court has held that the statements recorded in the preliminary enquiry behind the back of the charged Government servant cannot be read in evidence by the Enquiry Officer.

12. Giving of only a gist of statements made by the witnesses during the preliminary enquiry and not the full statements of the witnesses would amount to denial of reasonable opportunity and would have the effect of vitiating the proceedings.

13. In view of the aforesaid infirmities which go to the root of the matter, it is not necessary to consider the various other contentions raised by both sides. We have no doubt in our mind that the impugned orders of removal from service dated 31.1.1986 as well as the appellate and revisional orders are unsustainable in law. We, therefore, set aside and quash the same and direct that the applicants shall be reinstated in service as expeditiously as possible and preferably within a period of three months from the date of receipt of this order. The respondents shall also give the applicants arrears of pay and allowances if they give a certificate to the *respondents* *a* that they had not been in gainful

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employment from the date of their removal from
service to the date of reinstatement. The said
period shall also be treated as duty **for all purposes.**

There will be no order as to costs.

B. N. Dhondiyal
(B.N. DHONDIYAL)
MEMBER (A)
04.09.1992

P. K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J)
04.09.1992

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