CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1835/87

New Delhi this the 11th day of February, 1994.

Shri Justice V.S. Malimath, Chairman.
Shri J.P. Sharma, Member(J).
Shri S.R. Adige, Member(A).

Ashok Kumar
S/o Shri Chetan Dass,
Flat No.5, Old Double
Storey Quarters,
Police Station, Karol Bagh,
New Delhi-85 ... Petitioner.

By Advocate Shri Shyam Babu.

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

2. Additional Commissioner of Police,
(Delhi Range), I.P. Estate,
New Delhi.

3. Shri A.K. Kanth,
Deputy Commissioner of Police,
Central District, Delhi Police,
Delhi.

4. Shri Anil Sinha, ACP,
Original Road, Delhi Police,
Delhi. ... Respondents.

By Advocate Mrs Avnish Ahlawat.

O R D E R

Shri Justice V.S. Malimath.

This case has come on a reference made by the Division Bench expressing doubt about the correctness of the decision of the Principal Bench of the Tribunal between Sultan Singh Vs. Union of India & Ors reported in ATR 1989(2) CAT 99.

2. A disciplinary inquiry was held against the petitioner, Shri Ashok Kumar, a Sub-Inspector of police of Delhi Administration, alleging that he is guilty of gross misconduct and negligence in discharge of his duties. It is alleged that when he was posted at Paharganj police station, he received a telephonic message at night on 26.5.1983 that a quarrel is taking place near Vijay Hotel in front of the Delhi Railway Station. The petitioner along with a Constable went to the spot for making an inquiry. Soon after, another telephonic message was received that one Sidharth resident of Multani Dhanda, Paharganj was injured in a shooting incident near Vijay Hotel. The allegation is that the petitioner did not make a proper inquiry in response to the first telephonic message and that had he made a proper inquiry, he would have come to know about the shooting incident that took place in the same area in respect of which a subsequent telephonic message was also received at the police station. The other allegation is that though he was instructed by Shri Lal Chand, Sub-Inspector, a colleague of his not to make an entry of his arrival in police station, the petitioner did make entry DD No. 3-B. The entry made would indicate that there was only a minor dispute as recorded by him which would be inconsistent with the serious incident of shooting that took place. The petitioner having denied the charges levelled against him, a regular inquiry was held by the Inquiry Officer. The Inquiry Officer held the charges proved. The disciplinary authority, namely the Deputy Commissioner of Police, agreeing with the said findings passed an order on 8.7.1985, Annexure A-11, imposing the punishment of forfeiting 5 years of approved service permanently entailing proportionate reduction in his pay with effect from the date of the order. His appeal against the said order was dismissed by the Additional Commissioner of Police by order, Annexure-13, dated 24.1.1986. It is the said order that is challenged in this application.

3. The principal contention of Shri Shyam Babu, learned counsel for the petitioner, is that the Deputy Commissioner of Police, who passed the impugned order of punishment being an authority lower in rank than the Deputy Inspector General of Police who was his appointing authority, the same is illegal and invalid. The respondents on the other hand contended that the petitioner was appointed as a Sub-Inspector not by the Inspector General of Police but by the Assistant Inspector General of Police (I.I.G.) and that the Deputy Commissioner of Police who imposed the penalty being the appointing authority for Sub-Inspectors and holding post equivalent to that of the A.I.G. there is no infirmity in the impugned order. Alternatively, it was contended that the Deputy Commissioner having been prescribed as an authority under the rules/empowered to impose the penalty of forfeiting 5 years approved service, the same is legal and valid even if the Deputy Commissioner was an authority lower in rank to the authority which appointed the petitioner as Sub-Inspector.

4. Article 311(1) of the Constitution of India provides that no person who is a member of a Civil Service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. There is a constitutional bar against dismissal or removal by an authority subordinate to that by which the Government servant was appointed. There is no such prohibition in regard to imposition of penalties other than dismissal or removal from service. In the present case, we are concerned with the power of the disciplinary authority to impose the penalty of forfeiture of 5 years approved service and not dismissal or removal from service. It is well settled that for the purpose of Article 311(1) of the Constitution what is

relevant is not as to who in law is the appropriate authority to make the appointment but who in fact made the appointment. Vide 1982(1) SLR 693 between Ramanand Singh Vs. State of Bihar and Anr., The principle has been succinctly stated by the Supreme Court in the following words:

> "....Therefore, it would appear that the appointment was made by the Commandant General even though rule 5 conferred power on the Provencial Government to make such appointments. It is quite likely that the amendment referred to in the judgement of the High Court may have been made with retrospective effect. We are left to guess work but this positive order would show that the appellant was appointed as Company Commander by the Commandant General. Therefore Commandant General had the power to dismiss him. The dismissal order would not be void on the ground that it is made by authority lower than the appointing authority. Therefore, the contention of the appellant must be negatived."

5. We shall now examine as to who actually appointed the petitioner as Sub-Inspector of Police.

6. The contention of the petitioner is that his appointment was, in fact, made by the Deputy Inspector General of Police and was only formally communicated by the Assistant General Inspector of Police. The respondents on the other hand maintained that the petitioner was appointed only by the Assistant Inspector General of Police. The best evidence is the order of appointment itself. The petitioner has produced the same at Annexure-I dated 26.5.1975 and reads as follows:

> "CENTRAL POLICE OFFICE, KASHMERE GATE, DELHI.
>
> ORDER
>
> No. 14009/Est. dated 26.5.1975
>
> Shri Ashok Kumar Gera son of Shri Chetan Dass, resident of H.No. 4, 4th Storey Police Station Patel Ngr, New Delhi-110008 is appointed as a temporary Sub-Inspector in the Delhi Police with effect from 26.5.1975 in the pay scale of Rs.425-15-530-EB-15-560-20-600 plus usual allowances

admissible to the Central Government Employees, in an existing vacancy.

2. His appointment is under the Police Act (Act V of 1861) and the provisions of the Police Act and of the Rules issued thereunder as now inforce, are applicable to him. He will also be governed by the provisions of the Central Civil Services (Temporary Service) Rules, 1965.

3. His appointment is provisional and subject to:-

(i) The satisfactory verification of character and antecedents; and

(ii) The execution of Agreement Bond with regard to the refund of salary, cost of Uniform, Capitation charges, etc., in case of his leaving the department without completion of training or before a period of 3 years after completion of the prescribed training.

Sd/- Arun Bhagat
Assistant Inspector General of
Police, Delhi."

7. A bare perusal of the order of appointment makes it clear that the petitioner has been appointed by the Assistant Inspector General of Police, Delhi Shri Arun Bhagat. There are no words in the order to indicate that the actual order of appointment has been made by a superior authority and that th AIG is only communicating the same on his behalf. Shri Arun Bhagat, the signatory of the order has also not signed it for the Deputy Inspector General of Police. The petitioner has not placed any other material justifying the inference that he was actually appointed by the Deputy Inspector General of Police though the order of appointment has been signed and issued by the Assistant Inspector General of Police. We have, therefore, no hesitation in holding that the authority who appointed the petitioner as Sub-Inspector is the Assistant Inspector General of Police and not the Deputy Inspector General of Police.

8. The learned counsel for the petitioner, however, contended that on the date on which the petitioner was appointed as

Sub-Inspector, it was the Deputy Inspector General of Police that had the competence to do so and not the Assistant Inspector General of Police. Firstly, it is not relevant as to who in law was the competent authority to make the appointment. What is relevant is as to who is the authority who actually made the appointment. In this behalf, the learned counsel for the petitioner relied upon the decision of the Single Judge of the Delhi High Court reported in 1975(2) SLR-683 between Ram Karan Vs. Union of India and Ors. That was a case in which Shri Ram Karan was promoted as a Head Constable. He contended that his appointing authority was the Inspector General of Police and the Assistant Inspector General of Police had only carried out his orders and issued the order of appointment. These averments of the petitioner were admitted by the contesting respondents in that case. The petitioner had also produced other materials to establish that the Inspector General of Police was the authority who had ordered his appointment. It is in this background that it was held that Inspector General of Police was the appointing authority of Shri Ram Karan. The decision of the Delhi High Court, therefore, rested on a finding recorded by it on consideration of all the relevant materials including the admission of the respondents in that case. The said decision cannot be regarded as laying down any proposition of law as such which can be pressed into service as a precedent. There is, however, one observation in the said decision that it is well known that the Assistant Inspector General of Police functions on behalf of the Inspector General of Police. With great respect, it is not possible to agree with this observation. Apart from the fact that the observation has not been made on the basis of any material, we fail to see how it can be said that the Assistant Inspector General of Police always functions on behalf of the Inspector

General of Police and that, therefore, every action of the Assistant Inspector General of Police must be deemed to be the action of the Inspector General of Police. It is also necessary to note that in the present case the contention is that the petitioner's appointment as Sub-Inspector was actually made by the Deputy Inspector General of Police and communicated on his behalf by the Assistant Inspector General of Police. This decision was followed by the Tribunal in ATR 1989(2) CAT 99 between Sultan Singh Vs. Union of India & Ors. The only discussion in the judgement of the Tribunal in this behalf is contained in paragraphs 5 and 6 of the judgement which read as follows:

> "5. Reliance was placed by Counsel of the applicant on the decision of the High Court of Delhi in Ram Karan Vs. Union of India (1975(2) SLR 683) where the mere fact that the Assistant General of Police had signed the order pertaining to the promotion of the petitioner in that case as Head Constable was held not sufficient to make it a promotion made by the Superintendent of Police.
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> 6. It follows that the imposition of the penalty by the order dated 7.10.1982 is illegal as violative of Rule 6 of the Delhi Police (Punishment and Appeal) Rules, 1980.
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> On a perusal of the proceedings of the enquiry we are satisfied that there is force in the plea of the applicant regarding the denial of reasonable opportunity. The applicant had prayed for copies of documents relating to the MLC of Tuki Ram and DD entry regarding the departure and arrival of Constable Hasan Mohammed who is stated to have accompanied Tuki Ram. He had also prayed for inspection of the original complaint stated to have been made by Tuki Ram. These requests were not allowed. In the nature of the case the rejection of the request does amount to denial of reasonable opportunity of defence. It is on record that the complaint itself was undated. The proceedings originally initiated were on the basis

of an imputation where even the date of the alleged incident was not mentioned. It is seen that at a later stage de novo proceedings from the prosecution stage was ordered by the Deputy Commissioner of Police and it was only then that the date of the alleged incident was referred to as 22.4.1981. Again the applicant was furnished only the gist of the statements given by the witnesses, as is clear from the memorandum of charges. As has been held by the Supreme Court in the State of Punjab Vs. Bhagat Ram (1975(1)SLR 2) the object of supplying statements of the witnesses to the delinquent Government servant is to enable him to refer to such statements so that he can have an effective and useful cross examination of such witnesses. It was further held that it is 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 levelled against him. It was laid down that a synopsis does not satisfy the requirement of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken".

9. The Tribunal failed to notice that it is in the light of the admission made by the respondents and the other materials produced by the petitioner, that a finding of fact was recorded by the Delhi High Court in Ram Karan's case that the appointment of the Head Constable was made by the Inspector General of Police and formally issued and communicated by the Assistant Inspector General of Police. No principle of law as such was laid down in that case. Hence, with respect, it was not right to understand the decision in Ram Karan's case as laying down a principle which can be followed as a precedent. The Tribunal also failed to notice that Ram Karan having been dismissed from the service, the question as to whether his dismissal was by an authority lower than the

authority which appointed him was relevant having regard to the mandate of Article 311(1) of the Constitution. In Sultant's case, the Tribunal was not dealing with the case of dismissal or removal. Therefore, Article 311(1) was not attracted. In that case, penalty imposed was one of forfeiture of 5 years approved service. The punishment other than dismissal or removal does not attract Article 311(1) of the Constitution. Hence, any authority who is duly empowered to impose penalty other than dismissal or removal can impose such penalty even if he is an authority lower in rank to the authority who appointed him. With respect, the Tribunal was not right in following the decision of the Delhi High Court in Ram Karan's case. In Sultan's case, the Tribunal did not examine whether the Deputy Commissioner was otherwise empowered under the rules to impose the penalty of forfeiture of 5 years approved service. As the decision in Sultan's case, in our opinion, does not lay down the law correctly, it is hereby overruled.

10. As Article 311(1) of the Constitution is not attracted in the present case, the penalty imposed not being one of dismissal or removal from service, what has to be examined is as to whether the Deputy Commissioner of Police who imposed the penalty of forfeiture of 5 years approved service was competent to do so or not.

11. The petitioner was appointed as Sub-Inspector before the Delhi Police Act, 1978 (hereinafter referred to as 'the Act') came into force. As already stated, he was appointed by the Assistant Inspector General of Police. Section 12 of the Act provides that Sub-Inspectors of Police and other officers of subordinate rank may be appointed by the Deputy Commissioner of Police, Additional Deputy Commissioners of Police, Principal of the Police Training College or of the Police Training School, or any other police officer of equivalent rank. Sub-section(1) of Sec.149

provides that the appointments made before the commencement of the Act shall be deemed to have been made under the Act. As the Deputy Commissioner is the appointing authority for Sub-Inspectors on the coming into force of the Act, the petitioner has to be deemed to have been appointed by the Deputy Commissioner. This position is further made clear by Sec. 150 of the Act which provides that police force functioning in Delhi immediately before commencement of the Act shall be deemed to be police force constituted under the Act and every member of the police force holding the office mentioned in column (1) of Schedule III, immediately before such commencement, shall be deemed to be appointed on such commencement to the office mentioned in the corresponding entry in column (2) of that schedule. Schedule 3 makes it clear that the Assistant Inspector General of Police shall be deemed to have been appointed as Deputy Commissioner of Police and the Deputy Inspector General of Police shall be deemed to have been appointed as Additional Commissioner of Police and Inspector General of Police shall be deemed to have been appointed as Commissioner of Police. Rule 4 of the Delhi Police(Appointment&Recruitment)Rules, 1980 framed under the Act prescribes the appointing authorities. For Sub Inspectors, the appointing authorities prescribed are, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal/PTS and any other officer of equivalent rank. Thus, it is clear that the Deputy Commissioner is the prescribed appointing authority for Sub-Inspectors. Forfeiture of approved service is one of the major punishments which can be imposed as provided in Rule 5 of the Delhi Police (Punishment and Appeal) Rules, 1980 framed under the Act. Rule 6 of the said rules deals with classification of punishments and authorities competent to award them and reads as follows:

"6. Classification of punishments and authorities competent to award them. - Punishments mentioned at Sl. Nos. (i) to (vii) above shall be deemed "major punishment" and may be awarded by an officer of the rank of the appointing authority or above after a regular departmental enquiry.
(ii) Punishment mentioned at Sl.No. (viii) shall be called "Minor punishment" and may be awarded by the authorities specified in sub-section (i) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition if any for which opportunity shall be afforded on request.

Authority to award competent	Rank to whom it can be awarded
(i) Deputy Commissioner of police and above.	Inspector and below.
(ii) Assistant Commissioner of Police.	Constable to Sub-Inspector.

(iii) The punishment mentioned at Sl.No. (ix) above may be called "Orderly room punishment" and shall be awarded after the defaulter has been marched and heard in Orderly Room by the Officers of and above the rank of Inspector as laid down in section 21(3)(c) of the Delhi Police Act, 1978".

12. Forfeiture of approved service being one of the major punishments, Rule 6 prescribes that it can be awarded by an officer of the rank of appointing authority or above after regular departmental inquiry. Rule 6, therefore, prescribed the officer of the rank of the appointing authority as the authority competent to impose the major penalties including the forfeiture of approved service. We have already held that the Deputy Commissioner of Police is the appointing authority for Sub Inspectors. Hence, it follows that the Deputy Commissioner of Police is the authority

prescribed under the Delhi Police (Punishment and Appeal) Rules, 1980 as the competent authority to impose all the major penalties including the forfeiture of approved service. We, therefore, hold that the Deputy Commissioner of Police was competent to impose the punishment of forfeiture of 5 years approved service on the petitioner.

13. It was next urged that the finding on the main charge is not based on evidence but on surmises and conjectures. We have carefully gone through the Inquiry Officer's report, the order of the Deputy Commissioner as also the order of the appellate authority and are satisfied that the finding is based on evidence and not on surmises and conjectures. The main charge is that the petitioner did not make a proper inquiry. The evidence clearly establishes that the telephonic message received was that a quarrel was going on near Vijay Hotel. What the petitioner did was to go to Sapna Hotel and to record the statement of its owner. That owner stated that there was some minor quarrel with two customers who refused to pay the bill. There is material to indicate that near the Vijay Hotel, a shooting incident took place at about the same time and that the person injured by the shooting died. The evidence shows that Vijay Hotel is located about 4 or 5 shops away from Sapna Hotel. The petitioner confined his inquiry to the owner of the Sapna Hotel though he had received the information that the quarrel was going on near Vijay Hotel. He did not go near that Hotel nor did he try to interrogate its owner, employees and others nearby. If proper inquiry was made, it is obvious that the petitioner would have certainly come to know of the shooting incident. The authorities were, therefore, justified in holding the petitioner guilty of perfunctory inquiry.

14. There is another charge held proved, namely that though Shri Lal Chand, a colleague of his, had on phone requested him not to make an entry after his return from the Sapna Hotel, he did make an entry. This, it is inferred, would be helpful to the accused involved in the shooting case. The learned counsel for the petitioner invited our attention to the evidence of Lal Chand who is supposed to have asked the petitioner not to make the entry. He admitted that when he instructed the petitioner not to make the entry, he was told by the petitioner that he had already recorded his return. To the same effect is the evidence of Jagpal. He has stated that the petitioner had already recorded his return before he received a phone call from Shri Lal Chand. Thus, the evidence clearly establishes that the petitioner had already made the entry before he was requested by Shri Lal Chand not to do so. Hence, the petitioner cannot be found fault with on the ground that he made the entry even after he received instructions from Shri Lal Chand not to make such an entry. The finding in this behalf rendered without considering the evidence of these two witnesses cannot be sustained.

15. In the light of our findings, it is for our consideration as to whether the punishment of forfeiture of 5 years approved service can be sustained. We have held that the finding holding the main charge proved is sound and does not call for interference. We have, however, held that the second finding in regard to making of the entry contrary to instructions is vitiated. Having regard to the totality of circumstances, we consider it just and fair to remit the case to the appellate authority to examine the question of imposing appropriate penalty in the light of our aforesaid findings that the latter part of the charge is not established.

16. For the reasons stated above, this application is partly allowed and the case is remitted to the appellate authority/Addl. Commissioner of Police for considering the limited question of imposing appropriate penalty on the petitioner and he is directed to take a decision expeditiously. No costs.

(S.R. ADIGE)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

(V.S. MALIMATH)
CHAIRMAN

'SRD'