



## COMMISSIONER OF POLICE, NEW DELHI

2. In these two D.As Constables Chander Bhan and Mehtinder Singh have impugned the Disciplinary

Authority's order dated 12.12.90 (Ann. A.2)

removing them from service, which has been upheld

(C) in appeal vide order dated 23/29.4.91 (Ann. A.1)

and have prayed for reinstatement w.e.f. 12.12.90  
with full back wages.

3. Shortly stated both applicants were suspended  
on 16.5.89 and proceeded against departmentally  
on the charge that while they were posted to P.S.

Tilak Marg, they detained Shri A. Shek Mittal  
and his wife at the Man Singh Road/Raj path crossing  
at about 11.00 p.m. on 7.5.89 and the Constables  
misbehaved with Shri Mittal and his wife; demanded  
Rs.500/- failing which they threatened to book  
them, Shri Mittal being alone with his wife, and  
apprehending danger to himself and his wife handed  
over Rs.500/- to the constables.

4. Action was initiated on the complaint filed by  
Shri Mittal. As its contents disclosed a cognizable

offence, a preliminary inquiry under Rule 15(1)  
Delhi Police (P&A) Rules was conducted in which the

allegation levelled against the applicants were

prima facie found substantiated. Accordingly a D.E.

was ordered in which the E.O. in his findings

dated 8.8.90 held the charges against the applicants  
to be proved. Tentatively agreeing with the E.O.'s

E.O. and exerting every finding copies of the same were made available to

the applicants and they were asked to give their

replies/representations if any, to the same. On

receipt of their replies, and after giving them an

opportunity of personal hearing, the disciplinary

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authority imposed the penalty of removal from service with immediate effect by the impugned order dated 12.12.90 and further directed that the period of suspension be treated as not spent on duty which was upheld by the appellate authority vide orders dated 23/24.4.91 against which these O.A.s have been filed.

5. We have heard Shri R.L. Sethi and Shri M.P. Raju counsel for the applicants. We have also heard Shri B.S. Oberoi, proxy counsel for Shri Anoop Bagai for the respondents. We have also perused the contents of the departmental enquiry record which was produced for our inspection by the respondents, and have gone through the same carefully.

6. The first ground taken is that the charge sheet and summary of allegations are not signed/issued by the competent/disciplinary authority. This argument is without merit as both the statement of charge (Ann. A.3) as well as the summary of allegations (Ann.A.4) have been signed by Inspector Ramesh Chand and the chargesheet has also been approved by the DCP (N.D) as she has signed the same. The next ground taken is that the allegations/charges were not accompanied by the list of witnesses/documents likely to sustain the charge as required under Rule 16/1 D.P. (P&A) Rules. This ground is also baseless as the D.E. file which was available for our

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inspection shows that the list of witnesses/documents relied upon by the prosecution was supplied to the applicants and their receipt obtained. The next ground taken that the charge sheet/summary of allegations is undated, prepared and served in a mechanical way and without application of mind is also without merit as the same are dated and do not betray any lack of mental application.

7. The next ground taken is that this is a case of mistaken identity. The applicant's claim that they were at Bengali Market at the relevant time as supported by evidence of DW's 3 & 4. It is also asserted that the complainant Shri Ashok Mittal had stated during cross-examination that one of the two constables who had approached them that night had a beard, but neither of the two applicants have a beard. Furthermore it has been asserted that there were no witnesses who actually saw the alleged incident. All these points lie within the realm of appreciation of evidence, which we in the Tribunal, exercising writ jurisdiction akin to that of the High Court are precluded from going into. Appreciation of evidence lies within the domain of an appellate court, and we are not a court of appeal. Suffice it to say that from a perusal of the findings of the Enquiry Officer this is not a case where there is no evidence.

8. - The next ground taken is that there has been a denial of reasonable opportunity to the applicants to defend themselves. This argument has no basis as it is clear that full opportunity was provided to the applicants at every stage to defend themselves.

9. Next it has been urged that the Enquiry Officer had cross-examined the witnesses which vitiates the proceedings. It must be remembered that in a departmental enquiry conducted under the Delhi Police (Punishment & Appeal) Rules, there is no Presenting Officer and it is permissible for the E.O. to put questions to the witnesses to seek clarifications and remove ambiguities. From the perusal of departmental enquiry file which was produced for our perusal by the respondents, it, however, appears that the E.O. has gone far beyond that merely seeking clarifications and removing ambiguities, and during questioning the defence witnesses 3 and 4 has put it to them that the evidence they have tendered, is false, concocted and given with a view only to save the applicants. Such observations by the E.O. clearly indicate that the E.O. has assumed the role of both Judge as well as Prosecutor and did not have an open and objective mind on the subject. In this connection, our intention has been invited to the ruling in Babu Singh vs. UOI-AIR 1986 CAT 195, wherein it has been held that in a departmental enquiry where the E.O. assumes the role of Judge as well as prosecutor, such departmental enquiry is vitiates. Under the circumstances, we have no hesitation in holding that the departmental

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enquiry against the two applicants stands vitiated on the ground that while conducting the enquiry, the E.O. has assumed the role of Judge and Prosecutor.

10. The next ground taken is that the Disciplinary Authority's finding is a tentative one and the applicants could not be punished on the strength of a tentative decision. Reliance in this connection has been placed on the judgment dated 29.4.91 in O.A. No.81/87 Suresh Kumar Vs. UOI. This ground appears to have been urged upon a misreading on the disciplinary authority's order dated 12.12.90. What had been stated in Para 3 of the order was that the E.O. submitted his findings holding the charge proved and tentatively agreeing with those findings that the copies of the same were given to the applicants to file a representation, if any, and on the receipt of representation and after considering the same, the penalty of removal from service was inflicted. That does not mean that the decision to remove the applicants from service was tentative one. This ground therefore also fails.

11. The last ground taken is that the copy of the preliminary enquiry report was not supplied to the applicant which has also vitiated the enquiry proceedings. Reliance in this connection has also been placed on the Calcutta High Court's ruling D.G.Das Vs. UOI - 1981 (2)SIR 187. As we have already held that the proceedings against the two applicants are vitiated on the ground that the E.O. while conducting the same assumed the role of both Judge as well as Prosecutor, we do not consider it necessary to discuss whether the departmental proceedings are vitiated on the ground of non-supply of the preliminary enquiry report also.

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12. In the result these two O.As succeed and are allowed, on the ground that the E.O., while conducting the departmental proceedings which resulted in the infliction of the impugned penalty, had assumed the role of both Judge as well as Prosecutor, and thereby the departmental proceedings were vitiated. The impugned orders are quashed and set aside. The respondents will however be free to initiate *de novo* enquiry, if so advised, in which case the period since removal from <sup>with</sup> service of the applicants will be dealt *as per* rules applicable. No costs.

(DR. A. VEDAVALLI) MEMBER

MEMBER (J)

(S. R. ADIGE) MEMBER

(A)

Bimla Devi

(बिमला देवी)

(BIMLA DEVI)

मोर्टगेज कार्पोरेशन/Court Officer

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