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CENTRAL ADMINISTRATIVE TRIBUNAL , PRINCIPAL BENCH,
NEW DELHI.

1) O.A.No.343/90
With
2) O.A.No.794/90
3) O.A.No.1912/91.

New Delhi: January 27, 1995.

HON'BLE MR. S.R.ADIGE ,MEMBER(A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Shri Jai Bhagwan Malik ,
s/o Shri Harphool Singh,
r/o Qr. No.9, ASI Type, P.S.Sabzi Mandi,
Delhi-07,
Inspector, Delhi Police, No.D-1/204,
(now posted in DAP Ist. Bn Kingsway Camp.,
Delhi-110009) .....Applicant

By Advocate Shri K.S.Chhillar.

Versus

1. Commissioner of Police, Delhi Police,
MSO Building , Police Head quaters,
I.P.Estate, New Delhi-110002;

2. Shri Ajay Aggarwal, IPS,
DIG(Intelligence) NSG,
CGO Complex,
Lodi Colony,
New Delhi.
r/o House No.J-22,
NDSE Part I,
New Delhi.

3. Deputy Commissioner of Police, South Distt.,
Hauz Khas,
New Delhi.

4. Chairman, Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi .....Respondents.

2) O.A.No.794/90

Shri Jai Bhagwan Malik,
s/o Shri Harphool Singh,
r/o Qr. No.9, ASI Type, P.S.Sabzi Mandi,
Delhi-110007. .....Applicant.

Versus

1. Shri Ajay Agarwal,
DIG(Intelligence), NSG., CGO , Complex,
Lodhi Colony, New Delhi.

2. Shri Mansoor Ali Saiyed,
Superintendent of Police,
Union Territory of Lkesha Deep, Kavarati-673555.
via HPO Cochin, Kerala.

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3. Shri P.N.Agarwal,
Addl.DCP, New Delhi District
Parliament Street,
New Delhi-110001 ....Respondents.

3) O.A.No. 1912/91

Shri Jai Bhagwan Malik,
s/o Shri Harphool Singh,
r/o Qr.No.9, ASI -Type, P.S.Sabzi Mandi,
Delhi-110007 ..... Applicant.

Versus

1. Commissioner of Police,
Delhi Police Headquarters,
MSO Building,
I.P.Estate,
New Delhi-110002.

2.Additional Commissioner of Police,
Southern Range,
Police Headquarters,
MSO Building,
IP Estate,
New Delhi -110002 .

3.Shri Ajay Aggarwal,
DIG(Intelligence),
NSG., CGO Complex, Lodhi Colony,
New Delhi -110003.

4.Shri M.S.Sandhu,
D.CP, IPS,
Deputy Secretary(Admn.)
Deptt. of Youth Affairs and Sports,
Shastri Bhawan (Room No.510),
Ministry of Human Resources and Development,
New Delhi.

5.Shri V.Ranganathan, ACP,
Security Police,
Copernicus Road, Travencore Hutments,
New Delhi .....Respondents.

Shri Arun Bhardwaj, Advocate for the respondents.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A)

As these three O.As have been filed by the same person; namely Shri Jai Bhagwan Malik, Inspector, Delhi Police, and the facts concerning the three O.As are inter-related and involve common points of law, they are being disposed of by this common judgment

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O.A.No.343/90

2. In this O.A.No.343/90, Shri Jai Bhagwan Malik has impugned the adverse remarks recorded in his ACR for the period 29.4.87 to 19.3.88 (Annexure-P5), and has prayed that the same be expunged from the record and a direction be issued to keep a vacancy of ACP reserved for him.

3. The applicant joined the Delhi Police Service as Sub-Inspector on 25.3.66. His case is that because of his consistently good record of service, he straight away climbed the ladder of promotion and was given various complex and important assignments culminating in his posting as SHO P.S.Mehrauli in December,1986, where he continued till March,1988. He alleges that his problems started when Shri Harish Arora s/o Shri Kalu Ram, a political leader, who had very friendly relations with the then Addl.CP Shri Ajay Agarwal interfered in his administration of the police station. It is alleged that in September,1987, some property dealers , headed by the said Harish Arora, attempted to grab about 10/12 bighas of land in Village Ladha Sarai, near Qutab Minar falling within his jurisdiction, by procuring some bogus and fictitious registered sale deeds. The applicant alleges that these persons also made approaches to him, but he did not succumb to their temptation. However, to his surprise, the then Addl.CP personally spoke to him for extending help to Shri Arora and his associates. The applicant states that he brought this fact to the notice

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of Deputy Commissioner of Police who ultimately reported to L.G. Delhi for issuing necessary instructions to the DDA to take charge of the land, to defeat the intention of these land grabbers. The applicant alleges that the then Addl. CP took it as a personal affront and became revengeful towards the applicant. He further alleges that on 10.10.87, on the occasion of the Phool Walon Ki Sair Mela at Jahaz Mahal, Mehrauli, Shri Suresh Arora s/o Shri Kalu Ram and younger brother of Shri Harish Arora were found making obscene gestures at the lady singers and creating a nuisance in the VVIP enclosures. He was turned out of the enclosure by Inspector Rajendra Kumar, the then SHO, Lodhi Colony , who was on duty at the spot. The said Suresh Kumar reported the matter to his father Shri Kalu Ram, who along with others, appeared during the course of the function and made an issue of it to the police officers on duty there. When they tried to disturb the arrangement, Shri Kalu Ram and his sons were arrested under Sec.151 Cr.PC at the orders of Inspector Rajendra Kumar and were confined to Mehrauli Lock-up. The applicant alleges that Shri Harish Arora immediately contacted the then Addl. CP at his house on the same night, falsely alleging that his father and brothers were arrested by the applicant who was the SHO of the police station at that time. It is further alleged that the then Addl. CP expressed his annoyance to the applicant on the telephone and although the applicant told him that Kalu Ram and his sons were arrested by the SHO, Lodhi Colony, the then Addl. CP was not satisfied. Thereupon, the Asstt.Commissioner

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of Police, Defence Colony, then working as Special Executive Magistrate dealing in the cases under Sections 107, 150, 151 Cr.PC , immediately issued a telephonic order, by-passing all the procedures to release Kalu Ram and his sons from the lock-p without any personal bonds or bail, at the direction of the then Addl.CP/It is further alleged that Shri Kalu Ram thereupon made an application direct to the then Addl Commissionerof Police alleging that they were humiliated and illegally arrested by the applicant. The then /Addl.Commissioner of Police thereupon marked the said application to the Deputy Commissioner of Police, Vigilance, for initiating an enquiry against the applicant and ultimately issued orders for regular departmental enquiry. Further more, it is alleged that the said Harish Arora involved himself in another case of land grabbing in February,1988 when he demolished a tomb in Mehrauli with an intention of grabbing the land around the said tomb. The applicant stated that he reported the matter to the Archaeological Department and the matter was reported in the Daily Newspapers (Annexure-P3 and P4). It is stated that when the applicant did not toe the illegal desires of the then Addl.CP and his land grabber friends, he was transferred from Mehrauli P.S to CID(SB) in March,1988. The ACRs of the applicant were recorded by the Deputy Commissioner of Police, South District, who gave a very good ACR inspite of indication by the the Addl.CP not to do so, and the then Addl.CP was the reviewing officer, who recorded the following adverse remarks, allegedly due to annoyance, ill-will, bias and malafide

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intention to appease his friend Shri Arora.

> "He is a below average officer, whose work and conduct was not upto the mark. There were many complaints about his rude behaviour. He should not be posted at place of any public dealing as his public dealing were not upto the mark. There were vigilance complaints against him. The report has been graded as 'C'."

The applicant alleges that upon being communicated these adverse remarks, he filed a representation on 12.8.88 to the Commissioner of Police for their expunction but the same was rejected, and his memorial to the Lt. Governor, Delhi was not allowed to be forwarded to that authority and rejected the same at the level of Commissioner of Police itself, compelling him to file this application.

4. The respondents have contested the O.A. and in their reply have denied that the then Addl.CP had friendly relations with Shri Arora. They state that the then Addl.CP was not aware as to how Shri Harish Arora interfered in the administration of Mehrauli Police Station as the applicant never brought it to his notice or to the notice of other senior officers such as ACP,DCP etc. They further state that the then Addl.CP was also unaware of the alleged land-grabbing incident in village Ladho Sarai in September,1987 as the matter was never brought to his notice. Regarding the alleged incident on the occasion of Phool Walon Ki Sair on 10.10.87, the respondents state that a vigilance enquiry was conducted and subsequently when prima facie action was found that the applicant was biased and unlawful,

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a departmental enquiry was ordered by the Commissioner of Police on 13.1.88. It is denied that it was the SHO Lodhi Colony who took Shri Kalu Ram and his sons to Police Station Mehrauli and it is also denied that Shri Arora contacted the then Addl.CP about this incident. It is stated that when the then Addl.CP tried to speak to the applicant that night after receiving the intimation of alleged incident, the applicant did not speak to him for one hour and when the Addl.CP tried to ascertain the circumstances, the applicant was rude to him which was also a part of D.E. held against him. It is also denied that the then Addl.CP spoke to SHO, Defence Colony on telephone. It is stated that Shri Kalu Ram had approached the then Addl.CP with a complaint, and the then Addl.CP was duty bound to entertain the complaint which was filed within his jurisdiction. Upon the receipt of the complaint of Shri Kalu Ram, the papers were marked to DCP/Vigilance for vigilance enquiry and after having established the unlawful, illegal and malafide action of the applicant, a regular departmental enquiry was ordered with the approval of the Commissioner of Police. The respondents have also denied that the then Addl.CP directed the then DCP, South District to spoil the ACR of the applicant. It is stated that the reviewing remarks were recorded by the then Addl.CP in the capacity of reviewing officer. There were certain instances of rude behaviour on the part of the applicant which were brought to the notice of the then Addl.CP from time to time, and the applicant was warned on many occasions to improve his behaviour with the public. It is stated that in the vigilance file , the applicant's behaviour

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was found to be unbecoming of SHO and even in the presence of ACP(Vigilance), he passed indecent remarks. A formal warning was given to the applicant by the ACP and a copy of the same was placed in his personal file but upon his personal request on 8.1.88 that the warning be not placed in his personal file and he would improve his behaviour, the ACP agreed not to do so. Had he any ill-will against the applicant, he would not have agreed to do so. It is alleged that a complaint was lodged by Shri Arjun Dass of Harkesh Nagar requesting to prosecute the applicant under sec.197 Cr.P.C. for having detained him and his brother-in-law from 23.3.87 to 25.3.87 illegally and unlawfully. It is also alleged that the applicant extorted Rs.10,000/- and demanded another Rs.10,000/- on the asurance that they would not be implicated in the case. Shri Arjun Dass contacted the ACP Shri S.S.Manan who was then posted as ACP, Hauz Khas for getting trapped the applicant by the Anti Corruption Branch. However, when they reached the Tis Hazari Court, the complainant was spotted along with the ACP by the applicant. In that case, a regular departmental enquiry was held and the complainant was threatened, pressurised and finally won over, with the result , he retracted from his original statement and the applicant was not punished. Since there was reasonable suspicion, the applicant's name was brought on the list of the officers of doubtful integrity. Another complaint has been referred to/allegedly made by one Ch. Daya Ram, a property dealer of Mehrauli accusing the applicant of using foul and abusive language for which he was

warned by the then Addl.CP It is alleged that the applican is a highly indisciplined and incorrigible type of person who passed indisciplined utterances against a very senior police officer and managed to have news items published along with the other disgruntled officers to malign the then Addl.CP in general public. It is, therefore, vehemently denied that the adverse remarks were recorded out of malice, ill-will, malafide and bad intentions on the part of the then Addl CP . It is stated that the then Addl.CP reviewed the confidential report with utmost care and caution and the remarks are based on facts and enquiries which are a matter of record. The then Addl.CP ordered a vigilance enquiry against the applicant on Kalu Ram's complaint in his capacity of Addl.CP and he was competent to do so by the powers vested in him, and ultimately the applicant was transferred because of his incompetence and misconduct upon the orders of the Commissioner of Police, Delhi.

5. The applicant in his rejoinder has reiterated the contents of the O.A. and denied the averments made by the respondents.

O.A.No.794/90

6. In this O.A.No.794/90 , Shri Jai Bhagwan Malik has impugned the order dated 5.8.88 (Annexure-P12) imposing a penalty of censure on the applicant for his lack of supervision while posted as SHO , Mehrauli, in disposal of a scooter deposited under section66 Delhi Police Act at P.S.Mehrauli.

7. The case of the applicant is that for the reasons already referred to in detail in the foregoing

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paragraphs, the then Addl.CP was inimical towards the applicant and wanted to teach a lesson, and for this purpose he utilised the service of Shri Mansoor Ali Saiyed, Addl.DCP. The applicant alleges that on 30.12.87, the then Addl.DCP paid a surprise visit at P.S.Mehrauli in the applicant's absence and checked the unclaimed properties deposited in the P.S. Malkhana. He found that one scooter was deposited on 1.1.87 under section 66 Delhi Police Act and sent to P.S. Vinay Nagar on 15.7.87 after a delay of six months and on that basis, a show cause notice of censure to the applicant was issued on 7.1.88(Annexure-P10). The applicant alleges that upon the receipt of the notice, he approached the then Addl. DCP to know the reason for the same who informed him that it had been issued at the direction of the then Addl.CP. It is alleged that he assured the applicant that he would not confirm the punishment, but expressed his helplessness as he did not want to displease the then Addl.CP and warned the applicant that the then Addl.CP was very annoyed with him. The applicant submitted his explaination regarding show cause notice on 8.2.88 but no action was taken by the then Addl.CP upon it for sometime and meanwhile he was transferred out and a new Addl.DCP joined and decided this notice vide impunged order dated 5.8.88, confirming the punishment of censure, without giving the applicant opportunity of being heard, although he had made a specific request in his explaination. The applicant alleges that upon the receipt of the impunged order, he submitted an appeal to the then Addl.CP who rejected it vide order dated 1.8.89, compelling him to file this O.A.

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8. On the question as to how the scooter was deposited in Mehrauli Police Station Malkhana, it is stated, it was seized on 1.1.87 by ASI Harminder Singh of P.S.Mehrauli under Section 66 of Delhi Police Act as it was found abandoned in Mehrauli Police Station area and the ASI deposited it in the police station Malkhana as unclaimed property. The scooter was without rear wheel and spare wheel and the information regarding seizure of the scooter was passed on to the Control Room atonce for onward passing this information to all police stations in Delhi vide D.D. entry dated 1.1.87 (Annexure-P15). The applicant contends that ASI Harminder Singh, the Investigating Officer of the case, could not link up the unclaimed scooter either with any crime or its real owner despite all possible efforts. H.C. Krishan Lal posted as Moharrir of Malkhana P.S.Mehrauli wrote a letter to CRO, Delhi on 10.4.87 (Annexure-P16) that the said scooter along with three other vehicles seized as an unclaimed property, were lying in the police station Malkhana and requested for verification as to whether the said vehicle was wanted in any case. He also sent a note to ACP, Hauz Khas on 23.3.87 (Annexure-P17) in which the information about the said scooter was mentioned and sent an another letter on2.4.87 (Annexure-P18) to ACP, Hauz Khas, containing information about five unclaimed vehicles including the said scooter. It is contended that the problem that came in the way in tracing out and linking up the said scooter was that it

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was registered in Punjab and there were no records available of the scooter in the STA Office, Delhi. Moreover, it was an old scooter and its registration and engine number had become faded and illegible and hence were not clearly readable to the naked eye. ASI Harminder Singh had recorded its registration number as PGU 5040 and Engine No. 73599 AP 1150/L. It was only after the CRO experts could decipher the figure that the real engine number was found as No.074272 and Chasis No.0735599, and the correct registration number was found as PDG 5044, and not as PUG 5040 as recorded earlier. Thus, the applicant contends that ASI Harminder Singh recorded an incorrect registration number, engine number and chasis number due to the same being illegible, obliterated and inadvertently passing on the wrong information resulting in the scooter not being linked up with the case FIR No.505 dated 9.12.86 under section 379 IPC registered in P.S.Vinay Nagar, New Delhi,coupled with the fact that scooter was not registered in Delhi but in Punjab led to delay in linking this abandoned and unclaimed scooter with the criminal case for which the applicant is not responsible. The applicant has stated that no action was proposed against ASI Harminder Singh, the Investigating Officer, who was primarily and directly responsible for connecting the unclaimed scooter with the crime and no action was taken against Moharrir Krishan Lal, Incharge of the Malkhana, whose responsibility was for the proper custody of all properties, including the unclaimed properties deposited in the police station and its restoration to their rightful owners or to link it up

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with any crime, if reported, in respect of that property under Rule 22.7 Punjab Police Act. The applicant states that he filed an appeal to the ACP, New Delhi against the impugned order of censure and also appeared in the Orderly Room on 21.7.89 and 28.7.89 but his appeal was rejected vide order dated 1.8.89, compelling him to file this O.A.

9. The respondents have contested the O.A. and have averred that the scooter in question was deposited on 1.1.87 under section 66 Delhi Police Act in P.S.Mehrauli , but was sent to P.S. Vinay Nagar on 15.7.87 after a delay of about six months. The complainant had repeatedly been informed but had not taken its delivery. The respondents aver that the applicant's reply to the show cause notice was carefully considered by the Addl.DCP, South District, but the same was rejected because the materials on record clearly established that he had not taken any action for six months for the disposal of the scooter and thus his supervision was lacking. Therefore, the proposed punishment of censure was confirmed vide office order dated 5.6.88 and his appeal was rejected. The respondents have denied the allegations levelled by the applicant against the then Addl.CP They also state that after checking of the record, the report of the CRO revealed that there was no query received from P.S.Mehrauli between 1.1.87 to 15.7.87. According to the instructions, Investigating Officers of the cases are expected to make efforts in respect of stolen vehicles and it was also expected from the SHO to inspect the vehicles

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lying in the Malkhana from time to time and ensure that they were connected and disposed of. It is alleged that the applicant was slack in this respect and if there was any lapse on the part of his subordinate staff, he should have brought to the notice of senior officers for necessary action but he did not do so.

10. The applicant has filed rejoinder reiterating the contents of the O.A. and denying the averments made by the respondents in the reply.

O.A.No.1912/91

11. In this O.A.No.1912/91, Shri Jai Bhagwan Malik has impugned the order dated 3.8.90(Annexure-A1) imposing the penalty of censure, consequent to a departmental proceeding, on the charge of alleged misconduct on the applicant's part, which has been upheld in appeal by the Commissioner of Police vide Order dated 26.2.91 (Annexure-A2).

12. The charge against the applicant is that on 10.10.87 while posted as SHO, Mehrauli, he did not hear the complaint of Shri Kalu Ram and his son regarding removal of his other son Shri Suresh from a seat in Phool Walon Ki Sair for which he was holding 'A' Class Pass and made them sit in a jeep which brought them to P.S.Mehrauli and directed S.I.S.S.Gill to book them under section 107/151 Cr.P.C. Accordingly, they were arrested and lodged them in the lock up, where they were not provided even medicines under the applicant's order. He deliberately avoided to talk to the then ACP(R) on phone and subsequently when he spoke to the Addl.CP on phone, he spoke rudely.

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A departmently enquiry was initiated against the applicant vide order dated 19.2.88, and was entrusted to the DCP, DE Cell. The Enquiry Officer submitted his findings holding the applicant responsible for the above mentioned mis-conduct. Tentatively agreeing with the same, show cause notice was issued on 22.5.90 calling upon him to show cause as to why his two increments should not be withheld permanently for a period of two years. In response to the show cause notice, the applicant submitted his explanation on25.6.90, in which he pleaded that he did not play any role in the arrest of the complainant and his sons and their arrest was made under the direction of the then SHO, Lodhi Colony by SI S.S.Gill and the matter was disposed of by the Special Executive Magistrate without making any adverse comments against the police. The applicant also denied that he had misbehaved with the then Addl.CP and stated that there were other circumstances/ grounds due to which the then Addl.CP was unhappy with him and the allegations were levelled against him because of the close relationship between the then Addl.CP and the complainant. The Disciplinary Authority states that he heard the applicant in person; he took into account the statement of Shri Brar, the then DCP, South District who appeared as a defence witness and who had clearly mentioned that the complainant had wanted to grab some land in P.S.Mehrauli area which the defaulter did not allow and the evidence showed that the release of the complainant and his sons was unusal. Keeping

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the overall circumstances of the case in view the Disciplinary Authority felt that the applicant's conduct was not so serious as to warrant a major penalty and accordingly ordered the penalty of censure against the applicant.'

13. In his appeal, the applicant pleaded

i) that he had been made victim at the instance of Shri Kalu Ram;

ii) that a show cause notice was issued to him for forfeiture of two years service but subsequently he was awarded the punishment of censure;

iii) that Kalu Ram submitted his complaint to the then Addl.CP who ordered for an enquiry to be conducted by the DCP or ACP(Vigilance) who were also subordinate officers of the then Addl.CP.

iv) that the orders passed by the then Addl. CP on Shri Kalu Ram's complaint are null and void as the then Addl.CP was a complainant who sent a report to the Commissioner of Police and was also a witness;

v) that the statements during the departmental enquiry were not recorded in his presence;

vi) that the then Addl.CP abused and misused his positionby holding that the arrest of Shri Kalu Ram and his sons was high handedness on the part of SHO Mehrauli;

vii) that he was not supplied the copy of the report submitted to the Commissioner of Police by the then ACP;

viii) that the departmental enquiry was conducte against him for his high handedness but the summary of allegations served on him by the DCP/DE Cell contained the allegatio of rude behaviour towards the then Addl.CP,

ix) that the summary of allegations was served on 12.5.88, whereas he had reported in the Special Branch in March, 1988, the disciplinary action should have been taken under the orders of the ACP/CID; and

x) that the evidence of Shri T.S.Bhalla and Shri S.S.Manan who were on duties, were not allowed by the Enquiry Officer under the direction of the then ACP.

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14. In the appellate order, the Commissioner of Police held that the grounds taken by the appellant had no force. The departmental enquiry was initiated against him on the basis of enquiry conducted in vigilance branch on the complaint of one Shri Kalu Ram; and the punishing authority after going through the reply given in response to a show cause notice issued to the applicant, took a lenient view and awarded him penalty of censure. On Kalu Ram's complaint, the then Addl. /CP(R) ordered that it was a case of high handedness on the applicants'part and should be enquired into by the DCP/ACP, Vigilance Branch. The then Addl.CP(R) was not the complainant in the case and he only reported the matter to the Commissioner of Police for his rude language to his senior officer on telephone on 10.10.87. The Commissioner of Police referred to rule 15(3) of Delhi Police (Punishment & Appeal) Rules,1980, according to which the Police Officer may or may not be present at a preliminary enquiry. Being SHO, it was his responsibility to make enquiries when a complaint about beating and eviction of the complainant's son from the VIP enclosure, was made but instead of doing so, the applicant arrested Shri Kalu Ram and his sons and put them behind the bars. In the summary of allegations, served on the applicant, the charge of high-handedness and rude behaviour had been framed against him. The departmental enquiry was ordered to be initiated against the applicant on 19.2.88, and at that time he was under the administrative control of the then Addl. CP (R). The applicant while submitting the list of DWs had not mentioned that he wanted to bring Shri T.S.Bhall and Shri S.S.Manan, ACs.P as DWs and the

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rulings quoted by him in his appeal were of no help, hence his appeal was devoid of any force.'

15. The applicant has also taken other grounds in his O.A. which have been contested and denied by the respondents in their reply.

16. The applicant has filed rejoinder generally supporting the averments made in O.A.

17. During hearing, it was noticed that in the reply filed by the respondents, the specific reply filed by the respondents i.e. page 6, was missing. Accordingly they were given permission to file a supplementary reply with specific reference to Para 5 containing the grounds in the O.A., which they have filed vide Filing No.10196 dated 10.11.94.

18. We have heard Shri K.S.Chhillar for the applicant and Shri Arun Bhardwaj for the respondents at considerable length. We have also perused the materials on record and have given our anxious consideration to the rival contentions made in each of the three O.As.

19. We shall consider O.A.No.343/90 first which relates to the prayer for expunction of adverse remarks recorded in the applicant's ACRs for the period from 29.4.87 to 19.3.88. The ACRs for the above period communicated to the applicant are reproduced below in full:-

> "In the annual confidential report of Inspector Jai Bhagwan No.D-1/204 for the period from 29.4.87 to 19.3.88, it has been mentioned that there is no complaint against his honesty. His moral character, moral courage and readiness to expose the malpractices of subordinates and proficience in Hindi were good. His personality was good with adequate initiative.

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His reputation for fair dealing with the public and accessibility to the public, power of command, interest in modern methods of investigation and in modern police methods generally and efficiency on parade were average. He was reliable and his impartiality was fair. His health, attitude towards subofdinates and relations with fellow officers, preventive and detective ability, working experience of Criminal Law and Procedure and work and conduct remained satisfactory. His loyality to the Govt. in power without regard to political and party feelings was unquestionable. General power of control and organising ability was adequate. He is a below average Officer, whose work and conduct was not upto the mark. There were many complaints about his rude behaviour. He should not be posted at place of any public dealing as his public dealings were not upto the mark. There were vigilance complaints against him. The report has been graded as 'C'."

A perusal of the above remarks makes it clear that the major portion of the remarks upto including a sentence 'general power of control and organising ability was adequate', was written by one officer (Reporting Officer) and the remaining portion which is adverse beginning with the sentence ' he is a below average officer.....was written by another officer (Reviewing Officer i.e. the then Addl.CP). It is only this, which can explain the glaring inconsistency in assessment of performance between the first portion of the remarks and the second portion of the remarks, but keeping the Govt.instructions in view, the substance of the good as well as the adverse remarks have to be communicated to the Govt. servant concerned, which has been done in this case. We note that the Reporting Officer, who is perhaps closest to judge the performance of a subordinate, has found the applicant not wanting in honesty, moral character, personality, initiative, reputation for fair dealing

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with the public, accessibility to the public, power of command, interest in modern methods of investigation and in modern police methods, reliability impartiality, attitude with fellow officers, preventive and detective ability as well as knowledge of law and procedure. In each of these spheres, the Reporting Officer has found the officer either good or satisfactory, or at any rate adequate. On the other hand his next immediate superior namely the Revisionary Officer who also has ample opportunity to watch the officer's work has noted that there were many complaints of rude behaviour against him during this period; his public dealings were not upto the mark; then were vigilance complainants also against him and his overall assessment was that the applicant was a below average officer whose work was not upto the mark and who should be graded as 'C'.

20. The sentence that there were many complaints of rude behaviour against the applicant is a question of fact and we note that the applicant has himself admitted in his representation, addressed to the Commissioner of Police that a political worker of village Dera, P.S.Mehrauli had submitted a complaint against him to the Vigilance Branch alleging his harsh behaviour towards him, which was enquired into and reported upon that the applicant's behaviour was indeed harsh. The applicant has admitted the then Addl.CP(R) administered a warning to him against which he appealed to the Commissioner of Police, and eventually the warning was cancelled. The respondents in their reply have also referred to a complaint filed by one Ch.Deya Ram alleging that the applicant used foul language towards him. The applicant has himself admitted in his rejoinder that he

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had been issued an advisory memo to be more polite in public and under the circumstances, the applicant cannot state that he was not cautioned in this regard. Hence this line has to stand.

21. The next sentence is that he should not be posted at a place of any public dealing as his public dealing is not upto the mark. No doubt, this sentence is somewhat at variance with the observations contained in the earlier part of the remarks that his reputation for fair dealing with the public..... were average, but in the light of the complaints about his rude behaviour, which have not been effectively contradicted, it cannot be said that these remarks are unwarranted.

22. The next sentence is that there were vigilance complaints against him. The respondents have referred to the incident arising out of Phool Walon Ki Sair on 10.10.87 resulting in a vigilance enquiry, where they state that prima facie it was found that the applicant's action in arresting Kalu Ram and his two sons was biased and unlawful. The applicant in his rejoinder has stated that the departmental enquiry was initiated not by the Vigilance Department bpt by the then Addl.CP but the fact remains that the departmental enquiry was entrusted to the Vigilance Cell. There was also a complaint filed by one Arjun Dass alleging that the applicant had extorted Rs.10,000/- and demanded another Rs.10,000/- from him, for not being implicated in a case. It appears that later the said Arjun Dass admittedly retracted his statement, and the matter was not persuaded but the applicant's name was put in the list of officers of doubtful integrity. Under the circumstances, it cannot be denied that there were vigilance complaints against

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the applicant and hence this sentence has to be allowed to stand.

23. In that event, it cannot be said that there no materials before the Reviewing Authority to conclude that the applicant was overall below average whose work was not upto the mark and whose overall grading should be 'C', or that these remarks were arbitrary, perverse or malafide and, therefore, violative of Articles 14 and 16 of the Constitution. It is true that the reporting officer's overall grading of the applicant was good, but the reviewing officer may well disagree with that assessment for cogent reasons to be recorded in writing, and here those reasons have been given. Under the circumstance we find no good grounds to expunge those remarks as prayed for by the applicant, and this application fails. It is accordingly dismissed.

24. We shall next consider O.A. No.794/90 in which the applicant was employed a penalty of censure for lack of supervision while posted as SHO, Mehrauli, in disposal of a scooter deposited under section 66 Delhi Police Act at P.S.Mehrauli.

25. Rule 6(ii) Delhi Police (Punishment and Appeal) Rules lays down that the punishment of censure is a minor punishment and may be awarded by the authorities specified in Section 21 (i) 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

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afforded to him on request. The applicant alleges that he had not been given opportunity of being heard, despite a specific request in his explanation, but the respondents have denied this allegation in Paragraph 4(xix) of their reply and states that as per the contents of show cause notice, the applicant was permitted to appear in the Orderly Room after submitting his reply to say anything more in his defence but he did not come forward. In his rejoinder, the applicant has stated that it is correct that the show cause notice mentioned that the applicant was permitted to appear in the Orderly Room immediately after he submitted his reply, to say anything more in his defence, but although he met respondent No.2 several times, and also made specific request in his explaination that he may be heard in person but respondent No.2 never gave him an opportunity of being heard in person strictly for disposal of show cause notice although the applicant had met many times in connection with the other official work. Meanwhile, respondent No.2 was transferred and respondent No.3 took charge as Addl.DCP, and as the applicant was also transferred, he had no occasion to see respondent No.3. The show cause notice was disposed of on 5.8.88 , three months after taking over the charge by respondent No.3 but the applicant was never provided any opportunity of being heard by respondent No.3. The censure order also does not state that the applicant was given any opportunity of being heard, although in the appellate order passed by the then Addl.CP it has been stated that the applicant was heard in person in the Orderly Room on 21.7.89, and this fact has not been controverted by the applicant.

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27. In 'Managing Director, ECIL, Hyderabad & others Vs. B.Karunakar & others (1993(25)ATC 704), the Constitutional Bench of the Hon'ble Supreme Court has observed that "the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantantions to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee ..... has to be considered on the facts and circumstances of each case." We have, therefore, to see whether any prejudice has been caused to the applicant in the event no personal hearing was given to the applicant by the Disciplinary Authority . In the appeal addressed to the then Addl.CP (Annexure-P13), the applicant has nowhere stated that he was not given a personal hearing by the Disciplinary Authority, resulting in prejudice being caused to him or that he could have brought additional materials to the notice of the Disciplinary Authority in the course of the personal hearing, which he was not able to do in reply to show cause notice. Moreover, we note that a personal hearing was given to the applicant by the then Addl.CP at the time of disposing of his appeal and under the circumstances, even if as alleged by the applicant that no personal hearing was given to him by the Disciplinary Authority, it is not possible to hold that prejudice has been caused to the employee to vitiate the action taken. Again to quote from B.Karunakar 's case (Supra), the Hon'ble Supreme Court has observed that if the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunit

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the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

28. The applicant has also taken the plea that the impugned punishment was out of vengence, malafide and out of ill-will of the then Addl.CP (Respondent No.1 but in his appeal petition, the applicant has said that " the delay, if any, is not deliberate and intentional but it was due to the fact that the real number of the scooter was dismantled by the accused person which caused delay in establishing its real identity." In other words, the applicant has not denied that there was no delay but has only stated that delay was neither deliberate nor intentional. Questions of intention, motive, sufficiency of evidence etc. are out of jurisdiction of this Tribunal because we are not an appellate forum. In Union of India & others Vs. Upendra Singh (1994(27) ATC 200), the Hon'ble Supreme Court while quoting the decision in H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons, (1992 Supp(2) SCC 312), affirmed the following principle:-

> " Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatement reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

29. In the background of this principle, we see

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no infirmity in the decision making process and under the circumstances find no ground to interfere with the impugned order. This O.A. fails and it is dismissed.

30. Lastly, we shall consider O.A.No.1912/91, in which the applicant has impugned the penalty of censure inflicted upon him consequent to the departmental proceedings on the charge of alleged misconduct on the applicant's part arising out of the happenings of 10.10.87 during Phool Walon Ki Sair. Here again, it is important to note that the penalty of censure is a minor penalty which may be inflicted 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. In the present case, a show cause notice was given to the applicant, his written explanation was obtained and he was also heard in person during course of departmental proceeding . Under the circumstances, it may be held that the provisions to Rule 6(ii) Delhi Police (Punishment & Appeal) Rules have been complied with. Under the circumstances, the applicant's averment that the evidence of Sarv Shri T.S.Bhalla and S.S.Manan was not allowed by the Enquiry Officer or that he was not supplied with the copy of the report submitted to the Commissioner of Police by the then Addl.C.P. which might have been relevant if a major penalty had been inflicted, are not relevant in the present circumstances, where only minor penalty of censure was imposed. The reasons adduced by the appellate authority, namely Commissioner of Police, for rejecting the applicant's appeal are cogent and cannot be faulted. The applicant has alleged malafide and bias against the then Addl.CP

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but as correctly pointed out by the appellate authority, the Addl.CP(R) was not a complainant in the case and only reported the matter to the Commissioner of Police for his rude language to his senior officers on telephone on 10.10.87. As only the minor penalty was inflicted, the fact that the statements during departmental enquiry were not recorded, does not vitiate the action taken. The applicant has alleged that the then Addl.CP misused his position by holding that the arrest of Kalu Ram and his son was high handed but as pointed out by the appellate authority in his order, the applicant being SHO should have made enquiries when a complaint about beating and eviction of Kalu Ram's son from the VIP enclosure was made, but instead of doing so, Kalu Ram and his son were arrested and the applicant put them behind the bars. As only minor penalty of censure was inflicted, even if the copy of the report submitted by the then Addl.CP was not supplied to the applicant, it does not vitiate the action taken. Further, in the summary of allegations served on him by DCP, DE Cell, the charge of highhandedness and rude behaviour find mention. The departmental enquiry was ordered to be initiated on 19.2.88 and at that point of time he was under the administrative control of ACP(R). No doubt, Rule 5(4) of Delhi Police (Promotion and Confirmation) Rules,1980 states that a departmental enquiry shall be deemed to have initiated after the summary of allegations are served, but this is for the purpose of determining the eligibility for admission for training in departmental courses

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and not for the purpose of Rule 14(4) of Delhi Police (Punishment and Appeal) Rules, 1980.

31. In the background of the principle of law enunciated in Upendra Singh's case (Supra), the Tribunal cannot go into the correctness of the decision in imposing the penalty of censure and has to limit himself only to reviewing whether the decision making process itself was correct or not. Upon a scrutiny of the materials on record and after hearing the counsel for both the parties, we are unable to detect any infirmities in the conduct of departmental enquiry and hence this O.A. fails and it is dismissed.

32. For the reasons discussed above, we find ourselves unable to grant the reliefs prayed for in any of the three O.As and the same are, therefore, dismissed. No costs.

(LAKSHMI SWAMINATHAN)
MEMBER (J)

(S.R.ADIGE)
MEMBER(A)

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