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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1605 of 2004

New Delhi this the 2nd day of December, 2004.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.K. MALHOTRA, MEMBER(A)**

1. HC Azad Prakash
(PIS No. 28861166)
R/o V&PO: Kassar, Distt. Jhajjar,
PS : Bahadurgarh, Haryana.
2. Const. Suresh Kumar,
(PIS No. 28900189)
R/o Vill: Dhtar, PS: Sampla,
Distt. Rohtak, Haryana.
3. Const. Sunil Kumar,
(PIS No: 28990102)
R/o V&PO: Kulashi, Distt. Jhajjar,
PS: Bahadurgarh, Haryana.
4. Const. Jitender,
(PIS No: 28911614)
R/o Vill: Malik Pur,
PS: Jaffarpur Kalan,
Delhi.

...Applicants

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi through
Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Joint Commissioner of Police,
Southern Range, P.H.Q.,
I.P. Estate, New Delhi.
3. Tajender Luthra,
Deputy Commissioner of Police,
South-West District,
PS Vasant Vihar, New Delhi.

...Respondents

(By Advocates Shri Rishi Prakash)

ORDER (ORAL)

By Shri Shanker Raju, Member (J):

Heard the learned counsel for the parties.


2. Applicants impugn a major penalty which was affirmed in appeal on the ground that whereas the charge alleged against them


does not include the charge of not taking follow-up action against Kabaries, the Enquiry Officer has held this charge proved on which the punishment has been imposed

3. On the other hand respondents' counsel vehemently opposed this contention. In the light of Rule 16(ix) of the Delhi Police (Punishment and Appeal) Rules, 1980, which provides that if the enquiry establishes charges different from those originally framed, the enquiry officer may record finding on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has had an opportunity of defending himself, against them.

4. It transpires that on this different charge the enquiry officer without following the procedure prescribed under rule 16(ix) of the Rules *ibid*, which was affirmed in appeal, is contrary to above Rules and has greatly prejudiced the interest of the applicants, as they have not been afforded any opportunity to rebut the charges by producing their defence. This act of the respondents vitiates the enquiry report and the subsequent order as well.

5. In this view of the matter, Original Application is allowed. Impugned order is set aside. Respondents are directed to accord consequential benefits to the applicants within three months from today. The other grounds taken in the OA are not being adjudicated upon. No costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

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