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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No.577 of 2004
with

Original Application No.827/2004

This the 4th day of March, 2011

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

O.A. No.577/2004

Constable Bijender Singh (PIS No.28820619)
R/o A-645, Gali No.8, New Twenty Foot Road,
Meet Nagar, Shahdara,
Delhi-110093.

... Applicant

(By Shri Anil Singal, Advocate)

Versus

1. Government of NCT of Delhi through its
Chief Secretary, Delhi Secretariat,
I.P. Estate, New Delhi.
2. Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
3. Joint Commissioner of Police (Armed Police),
PHQ, I.P. Estate, New Delhi.

... Respondents

(By Ms. Rashmi Chopra, Advocate)

O.A. No.827/2004

Inspector Ram Janam Singh No.D-1/291
S/o S. P. Singh,
R/o 209, S.F.S., Mukherjee Nagar,
Delhi.

... Applicant

(None present)

Versus

1. Union of India through its
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. Joint Commissioner of Police (Armed Police),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

... Respondents

(By Ms. Rashmi Chopra, Advocate)

ORDER

Justice V. K. Bali, Chairman:

By this common order, we propose to dispose of two connected Original Applications, as challenge is to the common orders inflicting punishment upon the applicants in the two Applications, sequel to a joint departmental enquiry. Learned counsel representing the parties would also suggest that as the questions of law and facts are common, these matters need to be disposed of by a common judgment.

2. Whereas Ram Janam Singh, applicant in OA No.827/2004, is an Inspector, Bijender Singh, applicant in OA No.577/2004, is a Head Constable in Delhi Police. A complaint against the applicants was lodged by Jitender Kumar and Ajay Kumar on 13.11.1996, alleging therein that they were doing the business of sale of lottery tickets opposite Anil Bakery, Raghubarpura Chown, Gali No.4, Gandhi Nagar, Delhi, and that on 11.11.1996 at about 10.00 a.m., SHO, PS Gandhi Nagar came at their shop and took them away with him to the police station,

where he did not allow them to come back and all the lottery tickets worth ₹30,000/- were taken away by the SHO to the police station. The complainants were released on bail at about 4.00 p.m. on the same day. They alleged that the SHO took ₹5,000/- from them, as otherwise he would not set them free on the same day, and that they paid the amount for the said purpose. It was further alleged that the SHO foisted a false case on the complainants due to which they had to be present in the court, and that the SHO misbehaved with and ill-treated the complainants. It appears that on the basis of the complaint aforesaid, departmental action against the applicants was ordered. The enquiry officer after recording evidence of all the witnesses examined on behalf of the department, framed the following charge against the applicants:

"I Ram Kumar Verma, charge you, Inspr. Ram Janam singh No.D-1-291 while posted as SHO at P.S. Gandhi Nagar and HC ijender Singh No.404/E (Now 387/Sec) posted at P.S. Gandhi Nagar, that on 11.11.1996 at about 10 A.M., you Inspr. Ram Janam singh went on Govt. Gypsy at the shop of Jitender Singh s/o Chaman Lal and Ajay Kumar s/o Ramesh both residents of X-743, Chand Mohalla, Gandhi Nagar, who used to run their lottery tickets sale business jointly in a rented shop in Gali No.4 Opp. Anil Bakery Raghubar Pura-II. You Inspr. Ram Janam Singh got picked up the cloth containing lottery tickets worth Rs.30,000/- from the counter of Jitender and Ajay and brought both persons along with lottery tickets at P.S. Gandhi Nagar. You nspr. Ram Janam singh handed over Jitender and Ajay along with lottery tickets t HC Binejder Singh and asked him to register a false case against both the persons.

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You Inspr. Ram Janam Singh are also charged for making false DD entries of your departure and

arrival in the daily dairy. You had shown your departure from Police Station vide DD No. 21-B at 9.40 A.M. for the investigation of case FIR No.292/96 U/S 302 IPC P.S. Gandhi Nagar and made your arrival at 4.30 P.M. vide DD No.56-B, whereas you were present in the area of Police Station and brought both Jitender and Ajay to the Police Station around 11 A.M. and no investigation of said case was done by you. You Inspr. Ram Janam Singh kept the accused Jitender and Ajay in the lock up in a bailable offence and they were released with your permission & knowledge of receipt of illegal gratification.

You HC Bijender Singh in league with Inspr. Ram Janam Singh SHO P.S. Gandhi Nagar acting illegally made a false DD Entry vide DD No.26-B of your patrolling at 10.05 A.M. even though you had just finished the night duty. You HC Bijender Singh fabricated a concocted story of affray between Jitender and Ajay and got registered a false case vide DD No.18-A at 12.45 P.M. vide FIR No.295/96 u/s 160 IPC P.S. Gandhi Nagar. You HC Bijender Singh with connivance of Inspr. Ram Janam Singh kept the accused Jitender and Ajay in the lock up in a bailable offence and released them only after receipt of illegal gratification of Rs.5,000/-.

The above acts on the part of you Inspr. Ram Janam Singh No.D/1/291 (PIS No.16690116) and you HC Bijendr Singh, No.494/E, Now 387/Sec. (PIS No.2880619) are of grave misconduct, negligence and of taking gratification in discharge of your official duties which render you to be dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980, read with Section 21 of Delhi Police Act, 1978."

The enquiry officer after framing the charge, gave opportunity to the applicants to lead evidence in defence. The applicants availed the said opportunity and examined HC T. Manoharan as DW-1, Jugal Kishore as DW-2 and Const. (Dvr.) Om Prakash as DW-3. After assessing the evidence on record, the enquiry officer concluded as follows:

"On analyzing the statements of witnesses and documents on record, it is proved that Inspr. Ram Janam Singh No.D-1/291, the then SHO Gandhi Nagar had visited the spot on 11.11.96 and brought Jitender & Ajay along with the lottery tickets to the Police Station whereas HC Bijender Singh No.404/E (now 387/Sec) had not visited the spot. They both have concealed the facts by not mentioning these things in the daily diary register. Hence the charge is partly proved against Inspr Ram Janam Singh No.D-1/201 and HC Bijender Singh No.404/E."

Insofar as, the charge against the applicants as regards receiving illegal gratification is concerned, the enquiry officer observed as follows:

"Regarding receipt of illegal gratification the witnesses have given different versions at different stages. The testimony of PW-1 & PW-2 cannot be relied upon totally as they are the interested witnesses and their statements have not been collaborated by PW-3 Vinod Kumar, that he brought money from the mother of Jitender. However, by going through all the witnesses in totality, it seems that some money transaction had taken place, but it cannot be established that HC Bijender Singh or Inspr Ram Janam Singh personally took Rs.5000/- from the complainants."

3. The disciplinary authority vide its order dated 18.9.2003 agreed with the enquiry officer. It was held on the basis of statements made by PWs 1, 2, 4, 5 and 6 that the complainants were taken to the police station at about 10 a.m. by the SHO, and as such it was obvious that the entries made vide DD No.26-B, 18-A and 23-A Dated 11.11.1996 had been made in order to justify the arrest of the complainants, and that the plea taken by the defaulter HC Bijender Singh had no force and was

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not tenable. As regards applicant Ram Janam Singh, the disciplinary authority, once again on the basis of statements made by PWs 1, 2, 4, 5 and 6, held that he had not proceeded for investigation of case FIR No.292/96 P.S. Gandhi Nagar as recorded in the DD No.21-B dated 11.11.1996, and instead had gone to Street No.4 Raghubar Pura, Gandhi Nagar to the shop of the complainants. Insofar as, the allegation of receiving illegal gratification is concerned, the same was not held as conclusively proved. The disciplinary authority in that regard observed as follows:

"Regarding demand and acceptance of illegal gratification, the witnesses have given different versions at different stages. The testimony of PW-1 & PW-2 cannot be relied upon totally as they are interested witnesses being the accused in a case of affray and their statements have not been corroborated by PW-3 Vinod Kumar, who has denied that he brought money from the mother of Jitender. However, by going through all the witnesses testimony in totality, it is revealed that the charge of taking illegal gratification of Rs.5000/- cannot be substantiated. PW-1 Sh. Jitender has stated that he himself had paid Rs.5000/- to HC Bijender Singh in the presence of Mr. Prem Nath, Vinod and others. PW-1 further stated that Rs.5000/- were obtained from his mother through Mr. Vinod. Mr. Vinod has been examined as PW-3 and he did not corroborate this version. He stated that he has given only Rs.2000/- and did not know about the remaining Rs.3000/-. Further, the mother of PW-1 Smt. Lajwati (PW-4) has stated that she had given Rs.5000/- to Mr. Vinod i.e. PW-3, whereas Mr. Kuldeep i.e. PW-5 has stated that he had given Rs.5000/- to Mr. Vinod. All the PWs have given contradictory statements about the transaction of money. On the other hand, PW-1 himself admitted that (i) he is a BC of PS Gandhi Nagar and (ii) he was earlier convicted 7 years imprisonment in a criminal case u/s 394/454 IPC

PS Roop Nagar in 1988. Further PW-3 Mr. Vinod had stated that he had invested his money with Mr. Jitender (PW-1) and when he demanded his money back from (PW-1), he told him to first corroborate the complaint. This PW further stated that he had given his earlier statement before police during the PE due to pressure of Jitender because he wanted his money back from Jitender. DW-1, i.e. HC T. Manoharan No.252/E has produced and testified History Sheet No.A-64 of PW-1 and deposed that PW-1 is a BC of Bundle 'A'. 8 criminal cases including some of robbery have been registered against PW-1, which are of robbery nature. (PW-1) has already been convicted for 7 years in Case FIR No.101/88 u/s 392/341 IPC PS Roshanara Road and was also convicted in case FIR No.295/96 u/s 160 IPC PS Gandhi Nagar. Thus, the testimony of PW-1 and his family and associates cannot be accepted as the truth, specially when the other PWs have not supported the allegation of a transaction of money. Hence this charge could not be conclusively proved against both the delinquents."

Both the applicants, in view of the findings of guilt to the extent as referred to above, were inflicted the penalty of forfeiture of two years approved service permanently for purposes of seniority. The applicants challenged the order aforesaid in appeal, which found no favour with the appellate authority, who dismissed the same vide order dated 22.1.2004. The applicants vide separate OAs challenged the orders inflicting punishment upon them, which were decided by a common order dated 19.11.2004. The OAs were allowed and the impugned orders were quashed. It was urged before the Tribunal, when the impugned orders were quashed, on behalf of the applicants that there was no material to contend that the applicants had concealed the facts by not mentioning the fact of visit of

applicant Ram Janam Singh to the spot in the daily diary register. On the plea aforesaid, the Tribunal observed that the entries in the daily diary register were not stated to be in the hands of the applicants, and that the concerned DD writer had not been examined during the course of the enquiry to prove the fact, and further that once, this fact was not proved by any evidence, the findings of the enquiry officer could not sustain. This was not the only fact that was found to have been proved by the enquiry officer and there was no note of disagreement, and consequently any such findings to the contrary or the findings otherwise were also held to be unsustainable. The Bench then seized of the matter also looked the matter from another angle. Jitender Kumar and Ajay Kumar, it may be recalled, had alleged that they were booked under Section 160 IPC. They were, however, tried in the case aforesaid and vide orders dated 11.1.1999 they were convicted. The judgment of the Metropolitan Magistrate, Shahdara is available on the records and the same would show that it was a contested case, lasting for a period of little over two years, where the prosecution examined its witnesses, who were cross examined as well by the complainants, namely, Jitender and Ajay. The prosecution made endeavour to bring home the guilt of the accused by examining Ct. Raj Kumar as PW-1 and the applicant HC Bijender Singh as PW-2. Both the witnesses deposed on the lines of the chargesheet. They stated before the court that on 11.11.1996 when they reached at Raghubarpura

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No.2, they found both the accused quarreling with each other on account of some lottery tickets, and that they requested them not to quarrel, but despite being warned they persisted with their act and, therefore, they were arrested in the case vide personal search memo Ex.PW-1/A and Ex.PW-2/B. It is recorded in the judgment that both the witnesses were cross examined, but no material was put to them during cross examination so as to disbelieve the version given by them during their examination in chief. The court while observing that Const. Raj Kumar had corroborated the version given by HC Bijender Singh, and that there was nothing on record to disbelieve the same, and from the material on record it was evident that the complainant (HC Bijender Singh) had no enmity against the accused persons so as to falsely implicate them, held the accused persons guilty under Section 160 IPC, and sentenced them to pay a fine of ₹100/- each and in default of payment of fine, to undergo simple imprisonment for a period of seven days. We may mention at this stage that the judgment aforesaid has attained finality and has not been challenged in any higher judicial forum. The Bench took this fact into consideration and held that the conviction of the accused would prove the factum of the incident having taken place, and that it could not be believed thus that HC Bijender Singh had not visited the spot. The order passed by the Tribunal was challenged by the respondents by way of a writ petition in the Hon'ble High Court of Delhi, which has since been allowed

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vide order dated 23.9.2010. The matter has been remitted to this Tribunal to deal with the complicity or otherwise of the applicants on the basis of evidence which was brought on record on behalf of the respondents, after discussing the said evidence, and just not being influenced by conviction of Jitender and Ajay in the criminal case registered vide FIR No.295/96. The OAs have been restored for fresh adjudication by the Tribunal accordingly.

4. Insofar as the conviction of the complainants in the departmental enquiry and accused in the criminal case is concerned, it has been observed by the High Court that it is well settled that while the criminal case proceeds on the basis of evidence which is brought before the Court, the said evidence may or may not be relevant in departmental proceedings, and that the departmental proceedings are to be decided on the basis of preponderance of probability and, therefore, even if it is presumed that the complexity of Ajay and Jitender was there, the possibility of fabrication of the record by Bijender Singh with a view to save Ram Janam Singh could not be ruled out, inasmuch as, *per* PW-6, Ajay and Jitender had been picked up by Ram Janam Singh from their counter on the fateful day at about 10 a.m. As regards the DD entries, it was observed that "It may be noted that much turned on 5 DD entries and the Tribunal has found fault with the fact that the DD entries were not brought on record before the enquiry officer and were not proved. Prima facie the view is incorrect for the reason the respondents did not

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deny the DD entries. It is trite that in an enquiry only such facts have to be proved which are in dispute and a fact not disputed by the opposite side need not be proved for the reason the best evidence in favour of a party is the admission by the opposite side".

5. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. The matter has now to be decided on the basis of evidence led by the parties, in view of the observations/directions given by the High Court. The department in its endeavour to bring the delinquency of the applicants home, examined Jitender as PW-1 and his associate in sale of lottery tickets Ajay Kumar as PW-2. Whereas, Vinod Khanna was examined as PW-3, Smt.Lajwanti was examined as PW-4. Kuldeep and Const. Niranjan Prasad were examined as PWs-5 and 6 respectively. PW-7 ACP Ishwar Singh and PW-8 ASI Raj Kumar from Vigilance were called to testify the inquiry report and complaint of Jitender and Ajay. The applicants, while availing the opportunity to lead evidence in defence, examined HC T. Manoharan as DW-1, who produced the history sheet No.A-64 of Jitender Kumar @ Jitu, and stated that he was BC of Bundle-A, and eight criminal cases were registered against him, which were of robbery nature, and that he had already been convicted for seven years in case FIR No.101/88 u/s 392/341 IPC as also in case FIR No.295/96 u/s 160 IPC. Jugal Kishore, DW-2, a contractor in MCD, stated that on 11.11.1996

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Ajay and Jitender were booked by HC Bijender Singh for quarrel. Both were in business of sale of lottery tickets and they used to quarrel at least once a day over lottery. He was surety of Jitender, and Vinod was surety of Ajay. He stated that he did not give money to police, and that Ajay and Jitender had made false complaint against the applicants. Const. (Dvr.) Om Prakash examined as DW-3, stated that he was posted as a driver at PS Gandhi Nagar, and that on 11.11.1996 he along with SHO went on investigation of case FIR No.292/96 u/s 302 IPC in Government vehicle No.DAE-4297. He left at 9.40 a.m. vide DD No.21-B and came back at 4.30 p.m. vide DD No.56-B. He stated that SHO had not brought any person to police station in Government vehicle, and that HC Bijender Singh went to Raghubar Pura, and he told that BC Jitender and Ajay were quarreling and SHO had ordered to take action u/s 160 IPC against both of them.

6. The applicants made separate statements in defence where they raised several issues. The enquiry officer after making a mention of the evidence, concluded as referred to above, on the basis of such evidence. The conclusion by the enquiry officer, be it in favour of the applicants as regards allegations of receiving illegal gratification, or against them for fudging the DD entries and wrongly booking the complainants, was arrived at by simply discussing the evidence led by the department. We do not find even a word mentioned in the part

of the report with the caption 'Discussion and assessment of evidence on record' with regard to the evidence led by the applicants or the defence projected by them. The applicants represented against the report of the enquiry officer raising several points therein. The disciplinary authority, however, while agreeing with the report of the enquiry officer and taking into consideration the evidence led by the department, held the applicants guilty and punished them as mentioned above. We do not find any mention or discussion of evidence as led by the applicants during the course of the enquiry. The appellate authority has indeed made a mention of the grounds raised by the applicants in support of their appeal, but, once again, there is not even a remote mention of the evidence led by the applicants before the enquiry officer. We are not in detail making a mention of the points raised by the applicants at various stages, nor are we inclined to evaluate the defence projected by the applicants through the witnesses examined by them. Suffice it may, however, to say that one of the points raised by the applicants was that both Jitender and Ajay did not make any complaint against the applicants that they had concocted a story against them and falsely implicated them, during the course of criminal trial against them. Present is thus a case where the defence projected by the applicants has gone completely unnoticed. It appears that the concerned authorities chose to determine the controversy on the strength of the evidence led by the

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department only, as if the evidence led by the applicants and the defence projected by them was irrelevant and of no meaning and consequence. There is thus an apparent flaw in the impugned orders. No order of punishment, in our view, could be passed without taking into consideration the evidence led by the applicants and the defence projected by them. It may not be appropriate for us to appreciate the controversy on merits by evaluating the evidence led by the parties, and preferring one version over the other. This exercise, in the first instance, has to be done by the concerned authorities. In our considered view, thus, the matter needs to be remitted to the authorities for having a fresh look at it and pass orders after taking into consideration the evidence led by the applicants and the defence projected by them.

7. The course that we are adopting is also influenced on some other aspects of the case, which, in our view, were vital and have not been taken into consideration at all. In that regard, we may mention that the complainants in the departmental proceedings and accused in the criminal case u/s 160 IPC did not lead any evidence in defence nor even suggested that they had been implicated in the criminal case. We are conscious that the judgment of the criminal court may not be relevant, as surely and as has also been held by the High court, the fate of the departmental proceedings is dependent upon the evidence led therein, but surely while evaluating the evidence in departmental

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proceedings, the conduct of the complainants and accused in the criminal case was of vital importance, which could not be brushed aside. The judgment in the criminal case placed on records would clearly show that it was not a case of simple admission made by the accused to get away with the fine to save on time and money, as stated by PW-1 Jitender. It is clearly recorded in the judgment that the accused were not able to show any enmity with police. It would clearly depict that witnesses examined on behalf of the prosecution, and in particular, HC Bijender Singh, who is an applicant before us, were not questioned as regards fabrication of the case against them, nor even a suggestion appears to have been made to the witnesses that the accused were framed in a false case. Further, even from the statements of the accused recorded u/s 313 Cr.PC, it would not appear that they had stated that they were brought forcibly from the place of their business and falsely booked in a case. This does not appear to be a normal human conduct. It is difficult to digest that a person who has been falsely booked in a case, while facing trial would not even say so either while cross examining the witnesses examined on behalf of the prosecution or even in his statement u/s 313 Cr.PC. This aspect of the case has not been considered at all. Further, the criminal background of Jitender was also a relevant factor. He was involved in as many as eight criminal cases, which are of the nature of robbery. In one case at least he had already been held guilty and sentenced to undergo RI for

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seven years. He had a criminal background and would know the tricks of the trade. When the credit of a witness may stand impeached, the same would become relevant factor in appreciating the evidence. He and Ajay are interested witnesses and this has been so held as well by the authorities, but the testimony of PW 1 Jitender, which was of course supported by PW-2 Ajay, who was his associate in sale of lottery tickets and also an interested witness, had to be appreciated keeping in view the criminal background of Jitender.

8. There is yet another flaw in the proceedings culminating into the impugned orders which would be that without appreciating evidence of the PWs as per statements made by them, it has been simply mentioned that the witnesses had supported the case of the department. We may only mention at this stage that Vinod Khanna, PW-3, is not an eye witness. As per his version, he had invested money in business with Jitender after selling his TSR, and the day on which the incident occurred he had gone to Anand Vihar Authority for renewal of his licence. On his arrival he came to know that Jitender and others were in police station and they were later released on bail. He further stated that he had demanded his money which he had invested in lottery business with Jitender, but Jitender told him that first they had to make a complaint and they would solve their problem later. He clearly stated that he had made statement before the police due to pressure of Jitender

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as he wanted his money back. If perhaps, the statement of this witness was analysed, it could not have been said that he had supported the case of the department. He rather appears to have deposed on earlier occasion before police due to pressure of Jitender. Even though, while returning a finding, no specific reliance may have been placed on the testimony of PW-3, but the said statement ought to have been taken into consideration to appreciate the conduct of the complainants who were pressurizing witnesses to depose in tune with their version. Smt. Lajwanti who was examined as PW-4 had only stated that on 11.11.1996 at about 10 a.m. she was informed that SHO had carried Ajay and Jitender to police station, and at about 2 p.m. Vinod came to her and demanded ₹5,000/- for their release, and she sent the money through Vinod and then only Jitender and Ajay returned. This witness was primarily examined to prove acceptance of illegal gratification by the applicants and her testimony was also relied to return a finding of guilt against the applicants, even though the allegation as regards illegal gratification has been held as not substantiated. The disciplinary authority while returning a finding against the applicant mentioned that "From the statement of PWs 1, 2, 4, 5 and 6, it is evident that the defaulter Inspr. Ram Janam singh had not proceeded for investigation of case FIR No.292/96 P.S. Gandhi Nagar". This is absolutely incorrect. Such a finding could possibly not have been recorded on the basis of statement of PW-

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4 at all. Kuldeep, PW-5, of course, supported the case of the prosecution, but we may only point out at this stage that he is also a shopkeeper running his business in the same vicinity as the complainants, and there appears to be contradiction in the statement made by him and PWs 1 and 2. Whereas PWs 1 and 2 would state that they were put in the jeep by SHO and carried away, this witness would state that SHO's driver put the lottery tickets in a bag and carried away Jitender and Ajay along with the bag to police station. As mentioned above, we are not evaluating the evidence, but this aspect of the case also had to be taken into consideration by the concerned authorities. Const. Niranjan Prasad, examined as PW-6, stated that on 11.11.1996 he along with Const. Ravinder was in beat no.7, Raghubar Nagar, and at about 10 to 1.30 a.m. he received a WT message from SHO that there was a gathering and quarrel in Gali no.4, Raghubar Pura, and ordered them to reach at the spot. They saw the vehicle of SHO on way but they had no conversation with him. They found 15-20 people at the spot and were told that SHO had carried away Jitender and Ajay. Bamba asked them as to why only their counter had been taken whereas other counters were working. In his cross examination he stated that he could not see the persons sitting in the vehicle of SHO and that he was instructed by SHO on earlier occasions that there should not be any quarrel at the counters. While returning a finding of guilt, the concerned authorities have relied upon the statement of this witness as well,

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even though in the later part of the orders passed by the disciplinary authority it has been mentioned as follows:

"The statement of PW-6 smacks the collusion in between the SHO and the defaulter HC in order to register a case against Jitender, who is a B.C. of the area and Ajay."

These are contradictory findings. If PW-6 was in collusion with the applicants in registering a false case against Jitender and Ajay, he could not be said to be supporting the case of the prosecution. This is no way to evaluate and appreciate the evidence. It rather shows a negative attitude on the part of those who may be dealing with the case. If deposition of a witness to some extent may support the case of the delinquents, no conclusion on that can be arrived that he is in collusion. This witness clearly stated that he had reached the spot when he and the other constable received a WT message from SHO that there was a fight going on in the concerned area. This part of the statement is in line with the defence projected by the applicants, but whereas on the one hand, reliance is being placed upon the statement of this witness, on the other, it is being stated that he is in collusion with the defaulter SHO and HC.

9. It may be mentioned that insofar as the DD entries are concerned, the same have been held to be fabricated while dealing with the case of HC Bijender Singh on the ground that he was on night duty and normally, after one would do the night duty, he would leave the police station, and it would be unusual

that the HC stayed in the police station even after night duty. This is the main reason to hold the DD entries as made-up by the HC of his proceeding to the spot from where Ajay and Jitender were brought to the police station. Jitender and Ajay were allegedly picked up from Raghubarpura at about 10 a.m. on 11.11.1996 and were brought to the police station. The applicant Ram Janam Singh, SHO of the police station, is stated to have told the applicant HC Bijender Singh to book them in a case. He was indeed, even as per the case set up by the department, in the police station when Jitender and Ajay were brought there. He had stayed in the police station after night duty. He had not gone home after carrying out night duty. The finding has yet been recorded that normally he would have not been in the police station after night duty. Insofar as, the applicant SHO Ram Janam Singh is concerned, as regards the DD entry made by him for proceeding to investigate a criminal case, a finding has been returned on the basis of the evidence that once he had gone to the spot and brought Ajay and Jitender to police station, the said entry has to be false. While holding that the applicant was at the spot and had brought Ajay and Jitender to police station, the evidence, as mentioned above, has not been properly appreciated, and further the evidence led by the applicants in defence has not been taken into consideration at all. It is true and as has also been observed by the High Court that making of entries is admitted and there was thus no need to prove the

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same. We may only mention that it is the common case of the parties that DD entries were made. The question, however, to determine was whether they were fabricated. The DD entries have not been produced nor it is even known as to whether the same were made by the applicants themselves or by some body else. The finding that the said entries were fabricated is only because of the reasons as mentioned hereinbefore. It may be recalled that the complaint by Ajay and Jitender came to be lodged two days after the incident. The DD entries are said to have been manipulated on the very day when Jitender and Ajay were brought to the police station. There could be reason if such entries were made after Jitender and Ajay had lodged a complaint against the applicants. The possibility or probability of fudging such entries on the same date, particularly when the illegal demand of money made by the applicants was fulfilled, ought to have been looked into. The entries said to have been fabricated, at least should have been seen. Further, as to whether the entries were made by the applicants themselves or by someone else was also a question which required to be looked into.

10. We have only mentioned the aspects of the case which required to be looked into. Observations, if any, made on the points as mentioned above, are tentative and the concerned authorities shall not be influenced by the same while evaluating the evidence afresh, or looking into the circumstances as enumerated above.

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11. In totality of the facts and circumstances, while setting aside the impugned orders dated 18.9.2003 and 22.1.2004 passed by the disciplinary and appellate authorities respectively, we remit the matter to the disciplinary authority to look at the matter afresh in the light of the discussion made above. This matter pertains to the year 1996. It is expected that the disciplinary authority would pass a fresh order as expeditiously as possible and preferably within a period of six weeks from receipt of certified copy of this order. If the applicants may choose to be heard in person, such an opportunity shall be given to them.

12. These Original Applications are disposed in the manner fully indicated above. There shall, however, be no order as to costs.

(L. K. Joshi)
Vice-Chairman (A)

(V. K. Bali)
Chairman

/as/

Fresh major Extension of
time ddt 4/3/11