CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.141/2008

Reserved On:23.05.2016
Pronounced on:31.05.2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Ved Pal
HC in Delhi Police
PIS No. 28824307
R/o. A-67/2, Temple Colony,
Samai Pur, Delhi-43. .....Applicant

(Argued by: Shri Anil Singhal, Advocate)

Versus

1. Govt. of NCT of Delhi through
Commissioner of Police,
PHQ, IP Estate, New Delhi.

2. Addl. C.P (Security)
Security Main Lines,
Vinay Marg, New Delhi.

3. Sh. B. K. Mishra (DANIPS Group 'B')
Then D.C.P. (8th Bn. DAP)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.

4. D.C.P (8TH Bn. DAP)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi. ....Respondents

(By Advocate: Mrs. Rashmi Chopra)

ORDER

Justice M.S. Sullar, Member (J)

The challenge in the instant Original Application (OA), filed by the Applicant, HC Ved Pal, is to the impugned order dated 12.01.2006 (Annexure A-1), whereby the departmental

proceedings were initiated against him, findings of the Enquiry Officer (EO) dated 15.07.2006 (Annexure A-2) and order dated 20.02.2007 (Annexure A-3), by virtue of which, a penalty of forfeiture of 2 years of approved service with cumulative effect, entailing proportionate reduction in his pay, was imposed by the Disciplinary Authority (DA). He has also assailed the impugned order dated 29/30.08.2007 (Annexure A-4), by means of which his appeal was dismissed as well by the Appellate Authority (AA).

2. Tersely, the facts and material, culminating in the commencement, relevant for disposal of present OA, and emanating from the record, is that, on 18.07.2014, applicant, along with ASI (Driver), Sultan Singh and HC (Executive), Krishan Pal, were detailed for duty on PCR Van, in the area of Mangol Puri from 8.00 p.m. to 8 a.m. They were present at red light point of Mangol Puri at about 9 p.m. On the same evening, complainant Sh. Roshan Ali Malik along with his friends S/Shri Ombir Lahoria, Amit Lahoria & Jagdamba Prasad, were returning from Paschim Vihar, Jawala Heri Market to Sunder Nagri. As soon as, they reached red light Chowk, Mangol Puri at 9 p.m., meanwhile a pick pocket picked Rs.1000/- from the pocket of the complainant and another pick pocket took away mobile phone from the pocket of Amit Lahoria. They were caught red handed at the spot by the complainant with the help of his companion. However,

they attacked the complainant and his party and fled away from their clutches.

3. At the same time, PCR Van of the applicant was standing nearby the place of occurrence, but they did not come for their help. Applicant was in-charge of the PCR Van. When he was approached for help, he refused to render help to the victims and told them that the pick-pocketers were armed with deadly weapons. In this manner, the applicant and his other co-delinquent officers were stated to have committed gross-negligence, carelessness, dereliction in discharge of their official duty, and an act unbecoming of police officers.

4. As a consequence thereof, they were jointly charge sheeted by DA under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to "D.P. Rules") in the following manner:-

> "This is a finding in the D.E. against ASI (Driver) Sultan Singh No. 4134/D, H.C. Krishan Pal No. 1692/PCR, 454/T (now 9117DAP) and H.C. Ved Pal No. 501/PCR (now 9025/DAP) initiated under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 ordered vide No. 937-51/HAP-8th Bn. DAP dated 12.2.2006, which was initially entrusted to Inspr. Roshan Lal No. D-I/1860, VIIIth Bn. DAP, Delhi. Finally the D.E. was entrusted to the undersigned vide order No. 7345-58/HAP-8th Bn. DAP dated 23.3.2006. After carefully examination of the material available on records, the following Summary of Allegations were prepared in support of the prosecution:-
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> > "It is alleged against ASI (Driver) Sultan Singh No. 4134/D (PIS No. 28770404), H.C. Krishan Pal No. 1692/PCR, 454/T (now 917/DAP) (PIS No. 28760854) and H.C. Ved Pal No. 501/PCR (Now 9025/DAP) (PIS No. 28824307) that while posted in North-West Zone of PCR were detailed for duty on MPV C-65 in Mangol Puri area from 8 p.m. to 8 a.m. on 18.7.04 and were present at red light point, Mangol Puri at

about 9 p.m. that evening. Sh. Roshan Ali Malik r/o. K-77 Sunder Nagri, Delhi-93 along with his friends S/Shri Ombir Lathoria, Amit Lahoria and Jagdamba Prasad was returning from Paschim Vihar, Jwala Heri Market to Sunder Nagri. When they reached red light chowk, Mangol Puri at 9 p.m. a pick pocket picked Rs.1000/- from his pocket and another pick-pocket mobile phone from the pocket of Amit. The pick pockets were caught red handed at the spot by the complainant with the help of his friends. The pick-pockets attacked them and ran away. PCR Van No. 300/99 (C-65) was standing near the place of occurrence but PCR staff did not come to their help. When I/C Van, H.C. Ved Pal No. 501/PCR (now 9025/DAP) was approached to help, he refused to help by saying that the pick-pockets were armed with deadly weapon. H.C. Krishan Pal No. 1692/PCR, 454/T (now 9117/DAP) (gunman) and ASI (Dvr.) Sultan Singh No. 4134/D were also present on duty in the same PCR Van (C-65) and were co-defaulter. They failed to inform the Control Room/Senior Officers about not helping the complainant by I/C Van and did not perform their lawful duty.

The above act on the part of ASI Sultan Singh No.4134/D, H.C. Krishan Pal No.917/DAP and HC Ved Pal No.9025/DAP amounts to gross negligence, carelessness, dereliction in the discharge of their official duties and an act unbecoming of police officers which renders them liable to be dealt with departmentally under the provisions of Rule 16 of DPPR, 1980".

5. Thereafter, recording the evidence of the parties, the Enquiry Officer (EO) concluded that the charges against the applicant and HC Krishan Pal stand fully proved vide impugned enquiry report (Annexure A-2).

6. Agreeing with the report of EO, the above mentioned penalty was imposed on the applicant vide impugned order (Annexure A-3) by the DA.

7. Sequelly, the appeal filed by the applicant was dismissed as well vide impugned order dated 29/30.08.2007 (Annexure A-4) by the AA.

8. Still the applicant did not feel satisfied and initially preferred the instant OA, which was dismissed on merits vide order dated 03.06.2011 by a Coordinate Bench of this Tribunal.

9. However, in the wake of **Writ Petition (C) No.5014/2012,** filed by the applicant, the Hon'ble Delhi High Court set aside the order dated 03.06.2011 and restored the OA for considering the 4 (four) issues mentioned in the order, afresh, by this Tribunal vide order dated 30.08.2013. That is how we are seized of the matter.

10. What cannot possibly be disputed here, is that the Hon'ble Delhi High Court has remanded this matter to this Tribunal to decide the following 4 (four) issues:

> "(1) The competency of the officer imposing penalty;
>
> (2) The non-supply of the documents, i.e. copies of the statement of the witnesses examined in the preliminary enquiry;
>
> (3) Defence of the applicant not considered; and
>
> (4) Effect of non-examination of material witness.

Issue No.1

11. At the very outset, learned counsel for the applicant has fairly acknowledged that since issue No.(1) with regard to competency of the authority, to award punishment, has already been considered and negated against the applicants (therein), by this Tribunal vide order dated 03.11.2015 in ***OA***

No.603/2010 titled as ***Subhash Chander Vs. Govt. of NCT of Delhi and Others***, so he did not press issue No.(1) with regard to competence of DA to pass the punishment order. Therefore, it is held that the DA was empowered and competent to impose penalty on the applicant. Thus, issue No.(1) is accordingly decided against the applicant.

Issue No.2

12. Thereafter, inviting the pleadings, as contained in para 4.10. of the OA, learned counsel for applicant has contended with some amount of vehemence, that although the previously recorded statements of complainant Sh. Roshan Ali Malik and his companion S/Shri Ombir Lahoria, Amit Lahoria & Jagdamba Prasad were provided to the applicant, but the statement of 4th person, namely, Shri Amit Lahoria was not provided to him along with the summary of allegation and it has caused a great prejudice to his case.

13. The further contention of the learned counsel for the applicant that since the statement of Amit Lohia recorded by the police on 18.07.2004 and subsequent statements recorded by the police of Vigilance Department, were not supplied to the applicant, so there is a clear violation of S.O. No.125 dated 24.07.2001 and Rule 16(1) of D.P. Rules. Rule 16(1) of D.P. Rules, is neither tenable nor the observations of Hon'ble Apex Court in the case of ***State of U.P. Vs. Saroj Kumar Sinha (2010) 2 SCC 772***, is at all applicable to the

facts of the present case, wherein it was observed that the employee should be treated fairly in the departmental proceedings and even if the Charged Official fails to appear, it is the duty of the Enquiry Officer to examine the witnesses and to proceed ex-parte and non-supply of relevant foundational documents was held to be resulted in miscarriage of justice and denial of reasonable opportunity to defend himself.

14. Likewise, in the case of ***State of U.P. Vs. Shatrughan Lal & Another JT 1998 (6) SC 55***, it was observed by Hon'ble Apex Court that one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing in an effective manner. It was also observed that preliminary inquiry, which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet, then before a person is, called upon to submit his reply to the charge-sheet, he must, **on a request made by him** in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry (PE) particularly, if those witnesses are proposed to be examined at the departmental trial.

15. There can hardly be any dispute with regard to the aforesaid observation, but the same would not come to the rescue of the applicant in the present controversy. This

contention, of non-supply of earlier recorded statements of the witnesses to the applicant, vitiate the departmental proceeding, deserves to be repelled for more than one reason.

16. At the first instance, clause (2) of the Standing Order No.125 provides the procedure for conducting the preliminary enquiry, as envisaged under Rule 15 of D.P. Rules whereas Clause (5) posits the procedure to be followed to conduct departmental enquiry in terms of Rule 16(i) to (iv) of the D.P. Rules. According to Rule (5)(A)(i), the Enquiry Officer himself shall prepare a statement summarising the misconduct against the accused officer after going through all available relevant material, in such a manner, as to give full notice to him of the circumstances, in regard to which evidence is to be recorded. List of prosecution witnesses together with brief details of the evidence to be led by each of them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct.

17. Rule (5)(B)(i) postulates that, if the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible, the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-

examine them. Rule (ii) posits the statements of witnesses or the delinquent should be recorded in the 'First Person'. Rule (iv) provides that the Enquiry Officer is required to ensure that previous statement of **listed witnesses** as recorded during PE/Investigation are made available to the Government servant well in time for cross-examination, i.e., at least three clear days before the examination of the witnesses.

18. Meaning thereby, the documents and the statement of listed witnesses relied upon by the prosecution are to be supplied to the delinquent official. In the present case, the prosecution has relied upon the following documents:-

" List of Documents

1. Copy of Log Book of PCR Van C-65 dated 18.7.2004 of North-West Zone regarding the incident at 9.35 PM.
2. Copy of Duty Roster of North-West Zone of PCR dated 18.07.2004 showing the duty of ASI (Dvr.) Sultan Singh., No.4134/D, HC Krishan Pal, NO.1692/PCR (now 9117/DAP) and HC Ved Pal, No.501/PCR (9025/DAP).
3. Copy of complaint from Shri Roshan Ali Malik.
4. Copy of statement of Shri Roshan Ali Malik.
5. Copy of statement of Shri Jadamba Prashad.
6. Copy of statement of Shri Ombir Singh Lahoria".

19. It is not a matter of dispute that the department has already supplied the list of witnesses and copies of the relied upon documents to the applicant. No evidence is forthcoming on record to prove that the applicant has ever moved any application demanding the statements of any other witnesses. He has only mentioned in para 4.10 & 4.11 of OA that the EO was **orally** asked to supply the above mentioned documents.

20. On the contrary, the respondents have stoutly denied and reiterated that as per record, each and every statement recorded during the course of Departmental Enquiry (DE), was given to the applicant against his proper receipt by the EO. However, if he was in need of other documents related to that incident/enquiry, he should have obtained from EO **in writing**. The plea taken by the applicant at this belated stage is not logical.

21. Moreover, Rule 15 of Delhi Police Rules postulates that a preliminary inquiry is a fact finding inquiry. Its purpose is to (i) to establish the nature of default and identify all the defaulter(s), (ii) to collect prosecution evidence, (iii) to judge the quantum of default and (iv) to bring relevant documents on record to facilitate a regular Departmental Enquiry. In cases, where specific information covering the above-mentioned points exists, a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the Disciplinary Authority straightaway.

22. An unsuccessful attempt has been made by the learned counsel for the applicant to project that SHO and SI of the concerned Police Station have recorded the statements of the complainant & his companion on 18.07.2004. Furthermore, in the wake subsequently filed complaint dated 30.07.2004 (Annexure A-5), their statements were again recorded by the Vigilance Team. The contention of learned

counsel that since pointed previous statements recorded by the police were not supplied to the applicant, during the course of the inquiry, so there is a clear violation of Rules 15 & 16 of the D. P. Rules, is not only devoid of merit but misplaced as well.

23. As indicated hereinabove, any statements of witnesses recorded by the police, pertaining to the second incident of non-registration of the prompt FIR, has got no co-relation with the first incident of non providing timely help to the victims for which the applicants were charge sheeted. Otherwise, also, such statements recorded subsequently by the SHO and other police officers of PS Mangolpuri and Vigilance Team, are the matters of step-in-aid of investigation to establish the guilt of accused in a criminal case and would fall within the meaning of Section 2(h) of Criminal Procedure Code and cannot legally be termed to be statements recorded in preliminary inquiry, as envisaged under Rule 15 of the D.P. Rules. Such proceedings cannot legally be termed to be a preliminary inquiry, unless specifically ordered by the DA in this relevant connection. This matter is no more res-integra and is now well settled.

24. An identical question came to be decided by the Full Bench of Hon'ble High Court of Delhi in case of **Constable Rajender Kumar Vs. Govt. of NCT of Delhi and Ors. 2009 (111) DRJ 320** wherein, having

considered the provisions of Rules 15 & 16 of the D.P. Rules, it was held as under :-

> "14. It is thus clearly seen that preliminary inquiry is for the purpose of collection of facts in regard to conduct and work of the government servant in which he may or may not be associated and as such for the satisfaction of the government which may decide whether or not to subject the government servant to departmental inquiry for inflicting any of the punishments mentioned in Article 311. Although, usually, for the sake of fairness, explanation is taken from the government servant, but he has no right of being heard because it is for satisfaction of the government. Therefore, since, the preliminary inquiry is held for the satisfaction of the government, necessarily it can be held after an order passed by the competent authority of the government.
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> 15. A bare perusal of sub-rule (1) of Rule 15 would manifest that preliminary inquiry is held only in cases of allegations, which are of weak character, and before the department resorts to regular departmental inquiry it may like to ascertain veracity of the facts which are subject-matter of complaint against the delinquent. The purpose of preliminary inquiry has been mentioned in sub-rule (1) of Rule 15 which is (i) to establish the nature of default and identity of defaulter(s); (ii) to collect prosecution evidence; (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental inquiry. The provisions contained in Rule 15(1) also unequivocally clothe the departmental authority to straightaway order departmental inquiry in cases where specific information covering the above-mentioned points exists, and preliminary inquiry need not be held. It is only in other cases i.e. where matters as mentioned in sub-rule(1) of Rule 15 have to be ascertained that a preliminary inquiry is ordered. Further it is pertinent to note that Rule 15(3) provides that "all statements recorded during the preliminary inquiry shall be signed by the person making them and attested by the Inquiry Officer". In other words, it provides a procedure for preliminary inquiry that statements have to be attested by Inquiry Officer. Thus, preliminary inquiry has to be by Inquiry Officer who has been appointed for the purpose. The appointment has to be necessarily by the disciplinary authority or an appropriate authority in this regard. Any person who records the statement of a delinquent and forwards the same with his report to the disciplinary authority cannot be taken to be Inquiry Officer. In other words a preliminary inquiry can only by an officer appointed for the purpose. Even if a person on his own investigates into the fact without the order of the competent authority, at best it can be taken to be information supplied to the authority rather than a preliminary inquiry. If such information is received pursuant to a raid, investigation or vigilance inquiry it cannot be equated with a preliminary inquiry. The competent authority can order preliminary inquiry in case he feels that facts have to be collected.
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> 16. We are not impressed by the argument of Shri Mittal that if his interpretation is not accepted, Rule 16(iii) of the Rules

would become redundant. A plain reading itself clearly shows the distinction between sub-rule (3) of Rule 15 and Rule 16(iii) of the Rules. Sub-rule (3) of Rule 15 is relevant only with respect to the preliminary enquiry. It provides that there shall be no bar to the Inquiry Officer bringing on record any other document to the file of the preliminary enquiry if he considers it necessary after supplying copies to the accused. It further clearly provides that the file of preliminary enquiry does not form part of a formal departmental record but statements can be brought on record when witnesses are no longer available. Thus if there was a preliminary enquiry and witnesses are no longer available, only then the statements recorded in the preliminary enquiry can be brought on the record. As against this sub-rule (iii) to Rule 16 is a general provision. This Rule postulates examination of all the witnesses in the presence of the accused, who is also to be given an opportunity to cross examine them. However, in case, the presence of any witness cannot be procured without undue delay, inconvenience or expenses, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him, then also it could be brought on record. The further requirement is that either the statement should have been signed by the person concerned, namely, the person, who has made that statement, or it was recorded during an investigation or a judicial inquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the officer or the Magistrate, who had earlier recorded the statement of the witness, whose presence could not be procured. The Supreme Court in Kuldeep Singh v. The Commissioner of Police JT 1999 (8) SC 603 explained that Rule 16(iii) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the conditionprecedent for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(iii) cannot be exercised. The two Rules clearly operate in different situations. While sub-rule (3) of Rule 15 is confined to the statements recorded in the preliminary enquiry, sub-rule (iii) of Rule 16 is not confined to the preliminary enquiry and the prior statements can be brought on record subject to the compliance with other ingredients of sub-rule (iii) of Rule 16 which are already noted.

17. On going through the Division Bench judgment in Deputy Commissioner of Police v. Ravinder Singh it is seen that though it approves the reasoning of the Tribunal in the case of Ravinder Singh it was only to the extent that when the ingredients of sub-rule (1) of Rule 15 are satisfied, the file is to be put up before the Additional Commissioner of Police. There was no discussion on the question as to what constitutes a preliminary inquiry. It was not even remotely urged before the Division Bench that inquiry conducted by Anti Corruption Cell of Vigilance Cell would partake the character of a preliminary inquiry as envisaged in Rule 15(2). We find that the question as to what is preliminary inquiry has not been gone into. In

> our opinion the two Full Bench decisions of the Tribunal lay down the law correctly. We accordingly hold that there has to be an order to initiate preliminary enquiry by the competent authority. The preliminary enquiry must precede the departmental enquiry to collect the facts contemplated under Rule 15(1) of the Rules. Anti-corruption raids, investigation or vigilance enquiry including the enquiries by PGR Cell cannot be equated with preliminary enquiry as contemplated under Rule 15(2) unless there was an order by the competent authority to hold such an enquiry contemplated under Rule 15(1) of the Rules.
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> 18. The facts of the present case reveal that the petitioner and his co-delinquent were seen by Shri R.S.Chauhan, ACP accepting bribe. Inquiry was made from the truck driver and others on the spot and their statements were recorded on the spot. Report of the ACP, which was based on the spot collection of some material, would not partake the character of a preliminary inquiry as envisaged in Rule 15(1) of the Rules. That apart, a preliminary inquiry has necessarily to be ordered by the disciplinary authority and, therefore, any other inquiry, which is not ordered by the disciplinary authority, would not be a preliminary inquiry at all. The issue is answered accordingly. Let the papers be placed before the Division Bench for disposal of the writ petition".

25. Therefore, the statement of witnesses recorded by the police in criminal case pertaining to the second incident cannot be termed to be statements recorded during the course of preliminary inquiry, as urged on behalf of the applicant. Moreover, such statements are not at all relevant with regard to the allegations of not providing immediate help to the victim, assigned to the applicant of first incident. Hence, the department was not legally required to supply the copies of statements of witnesses recorded during the course of investigation to the applicant, in the departmental proceedings, particularly, when the statement of complainant and other two witnesses who were examined in DE have already been supplied to him. Indeed, he has never moved any written application for obtaining the

statement of any other statement/document of investigation, so question of causing any prejudice to him did not arise at all. Admittedly, the prosecution has already supplied all the copies of the statements & documents relied upon against the applicant in the D.E. proceedings.

Issue No.3

26. Insofar as issue of non-consideration of the defence evidence is concerned, the EO has duly evaluated the statements of DW-1 Shri Pankaj Kumar & DW-2 Shri Mahavir Prasad and came to the definite conclusion that Defence Witnesses produced by the applicant have stated that no incident took place. Their statements are not acceptable, because PW-5 HC Dharambir Singh has clearly stated in his statement that HC Ved Pal, In-charge of the Van had given message about the incident. They have failed to shatter the prosecution story and DE proceedings.

27. That means, not only that the EO has duly considered and appreciated the defence evidence, but he has recorded valid reason in this regard, in the following manner:-

> "I have carefully gone through their pleas advanced in the final defence statements. It is correct that ASI (Driver) Sultan Singh No. 4134/D was performing driver duty at that time and none of the P.Ws have approached him about the said incident. Besides this being driver of the vehicle, his responsibility is that he may maintain the vehicle properly and also to move the vehicle on the directions of the Incharge Van. Hence the charge levelled against him does not stand proved. As regard H.C. Krishan Pal No. 917/DAP, it is fact that he was performing gunman duty at that time and was standing outside the vehicle. It is fact that none of the P.Ws have approached him about the said incident, but his plea that he was standing 10 feets far the PCR Van when the complainant party have approached the Incharge Van, is not

acceptable. It is not acceptable that he had not heard their talking with Incharge Van. If it is admitted that he had not heard their discussions, then what he was doing there. Being a gunman, he should have more active and alert on duty. Hence it is clear that he had seen and heard the discussions between Incharge Van and the complainant party, but did not take interest and respond. As regard defaulter H.C. Ved Pal No. 9025/DAP, he was performing duty as Incharge PCR Van and it was his responsibility to attend each and every call either received through PCR Control Room or if noticed while performing his duty. In case this call was not received through Police Control Room, then it was his duty and responsibility to inform the Police Control Room about the incident and take necessary steps, as and when intimated by the complainant party. It is also fact that the incident took place near their base and if they have not seen the quarrel between the pick pockets and the complainant party, then it is clear that they were not alert on duty otherwise, it will be presumed that they deliberately did not react despite seeing the incident of quarrel. P.Ws 1, 2 & 6 have fully supported the prosecution story that H.C. Ved Pal was approached for help, but he refused to help by saying that the pick-pocketers were armed with deadly weapon. His plea that no independent witness was examined and these P.Ws are fellow/colleagues to each other does not help him in any way. He had not mentioned what contradictions are in their statements. The D.Ws produced by him have stated that no incident took place. The statements of these D.Ws are not acceptable, because P.W. H.C. Dharamvir Singh No. 1132/PCR has clearly stated in his statement that H.C. Ved Pal, Incharge Van No. 501/PCR had given a message that four boys have came to their base and informed that their chain, Rs.1000/- and mobile phone have been snatched. If no incident took place, then why H.C. Ved Pal had given such message.

CONCLUSION

In view of the above discussion, the charge against ASI (Driver) Sultan Singh No. 4134/D is not proved, while the charge against H.C. Krishan Pal No. 917/DAP and H.C. Ved Pal No. 9205/DAP stands fully proved.

28. Therefore, the contention of the learned counsel for applicant that DA and AA have considered his defence evidence cannot be accepted.

Issue No.4

29. Now, adverting to the question of effect of non-examination of the alleged material witnesses, it was for the

department to decide in its wisdom, to produce the number of witnesses, in order to prove the charge against the delinquent official. A bare perusal of the record would reveal that, the prosecution in order to substantiate the allegations attributed to the applicant, has already examined PW-1 complainant Jagdamba Prasad S/o Shri Kali Prasad, who has maintained as under:-

> "P.W.I Shri Jagdamba Prasad s/o. Shri Kali Prasad r/o. O-92 Sunder Nagri, Delhi-93. – Stated that on 18.07.2004 at 9 p.m. he alongwith Sh. Roshan Ali Malik, Omvir Singh and Shri Amit Lahoria were coming from Samajwadi Party office, Jwala Heri and when reached Mangol Puri Bus Stand, one boy out of three/four boys, picked mobile phone from the pocket of Amit Lahoria and Rs.1000/- from 7-8 in numbers and when they (P.W. & his friends) tried to caught them. The chain of Amit Lahoria was also snatched during scuffle. The person who picked Mobile Phone was caught by them and asked for help in a loud voice, but nobody came forward. The PCR staff at Mangol Puri Chowk also did not come for help. When the public left the spot, they went to PCR staff and asked H. C. Ved Pal, (wearing name place) present in the PCR Van as to why they have not come for help. He replied that he had not seen any fight. The P.W. again replied that the fight was going nearby. On this H.C. Ved Pal told that they attend only 100 No. Calls. The P.W. also identified H.C. Ved Pal, present in the D.E. and further stated that one person was sitting on the driver seat and one behind him, but they did not identified them. Thereafter the local police came there and their statements were recorded at the Police Station.
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> ASI Sultan Singh and H.C. Krishan Pal did not cross-examined the P.W. During cross examination by the H.C. Ved Pal No. 9025/DAP, this P.W. has further stated that the PCR van was standing on the service lane behind the Bus Stand. There was iron grill of about 3 feet in between the Bus Stand and the service lane and water trolley was also standing there. The incident could have been easily seen from there. H.C. Ved Pal further questioned that as per orders of worthy C.P., they can't move themselves without receipt of any communication, for which the P.W. replied

that he has nothing to say about this. It is correct that SHO had visited the spot and they were taken to the P.S."

30. Not only that, the department has also examined other victims, PW-2 Shri Roshan Ali Malik, PW3 Shri Omvir Singh Lahoria and PW-6 Shri Amit Lahoria. Instead of reproducing their statements in entirety, suffice it to say that they have fully corroborated the statement of complainant PW-1 on all vital counts. Besides his, oral evidence, the prosecution has also relied upon indicated documentary evidence.

31. As regards the non-examination of SHO Mangol Puri and SI Sanjay Gaur is concerned, they were not at all relevant witnesses to prove the specific charge attributed to the applicant. They reached the spot subsequently after the receipt of information, brought the complainant & his companion, and recorded their statements in the Police Station, involving the accused in the commission of the offence, mentioned above. Hence examination of SHO and SI of Mangol Puri, Police Station were not at all the relevant/material witnesses in the DE, particularly when complainant PW-1 Jagdamba Prasad and his companion have already appeared in the DE proceedings. So non-examination of SHO & SI Mangol Puri has got no adverse bearing on the DE proceedings.

32. Above all, even if according to the applicant, SHO Mangol Puri and SI Sanjay Gaur were the material witnesses, he could examine them in his defence evidence.

He has not moved any written application either to summon them or to provide the statement of witnesses.

33. Similarly, the observation of Hon'ble Apex Court in the case of **Hardwari Lal Vs. State of U.P. and Others (1999) 8 SCC 582** where neither complainant nor the other eye witnesses, who accompanied the appellant (therein) to Hospital for medical examination, were examined, will not advance the cause of the applicant because in this case, the prosecution has examined PW-1 complainant Jagdamba Prasad and other eye witnesses PW-2 Shri Roshan Ali Malik, PW3 Shri Omvir Singh Lahoria, PW-6 Shri Amit Lahoria and other official witnesses to substantiate the charges attributed to the applicant.

34. Moreover, it is now well settled principle of law that one line here and there in cross-examination of witnesses which is irrelevant and foreign to the crux of the charge, ipso facto, is not sufficient ground to ignore the entire cogent evidence produced on record by the prosecution. Above all, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. This matter is no more res integra.

35. An identical issue came to be decided by the Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** while considering the power of

judicial review and rule of evidence whereby has ruled as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
>
> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

36. Sequelly, the Hon'ble Apex Court in the case of **K.L. Shinde** v. **State of Mysore**, **(1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence has ruled as under:-

“9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of

> natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

37. Meaning thereby, if the epitome of the evidence produced by the parties during the course of enquiry, is put together, then conclusion is inescapable that charges framed against the delinquent stand duly proved on record.

38. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the evidence of the prosecution. The DA has rightly imposed the indicated punishment. The matter was again re-examined and confirmed by the Appellate Authority. The Disciplinary as well as Appellate authorities have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal in the obtaining circumstances of the case.

39. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

40. In the light of the aforesaid reasons and thus seen from any angle, as there is no merit, therefore, the instant OA again deserves to be and is hereby dismissed as such. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh