

**Central Administrative Tribunal
Principal Bench**

OA NO.603/2010

Order reserved on : 06.10.2015
Order Pronounced on : 03.11.2015

Hon'ble Mr. Justice B.P.Katakey , Member (J)
Hon'ble Mr. V. N.Gaur, Member (A)

SubhashChander
Ex Ct. of Delhi Police
PIS No.28883674
S/o Sh. Bishana Ram
R/o VPO: Nigadhu,
Distt.Karnal, Haryana.

- Applicant

(By Advocate: Sh. Anil Singal)

Vs.

1. Govt. of NCT of Delhi through
Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Special Commissioner of Police,
Armed Police, PHQ,
IP Estate, New Delhi.
3. D.C.P. (3rd Bn. DAP)
VikasPuri Police Complex,
New Delhi.
4. Sh. V.A.Gupta (DANIPS)
D.C.P. (3rd Bn. DAP)
VikasPuri Police Complex,
New Delhi.

- Respondents

(By Advocate: Ms. Rashmi Chopra)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicant has filed the present OA challenging the penalty of dismissal from Service imposed on him by the respondents vide order dated 27.05.2009 after a departmental inquiry. The appeal

preferred by the applicant against the order of disciplinary authority was also rejected by the appellate authority by order dated 11.12.2009. This Tribunal earlier dismissed this OA vide order dated 04.07.2011. The applicant challenged that order before Hon'ble High Court of Delhi in WP (C) no.4493/2012 which was disposed of by the High Court on 02.04.2013 with the following order:

"1. With respect to the authority of a DANIPS officer imposing the penalty upon the petitioner, we find that in the Original Application, in paragraphs 4.3, 5.13 and 5.14, petitioner pleaded as under:-

"4.3 That a D.E. was initiated against the applicant vide Order dt. 4.2.08 (Annexure A-1) by the respondent no.4 who was not competent to act as the Disciplinary Authority and initiate the Disciplinary Enquiry against the applicant being a DANIPS officer who had been given only JAG grade but was not an IPS Officer since the applicant was appointed IPS Officer.

5.13. Because the whole enquiry is in violation of principles of natural justice as the enquiry was initiated by the respondent No.4 then DCP (3rd Bn. DAP) a DANIPS officer who had been given only JAG grade but was not an IPS Officer, a person who cannot exercise the powers of disciplinary authority as has been opined very clearly in letter dated 29.6.98 LA to CP; Delhi in his office memo addressed to DCP North Dist. And as held by the Hon'ble CAT, Principal Bench, New Delhi vide order dated 18.7.2002 in OA No.1818/01 – "Suresh Kumar Vs. C.P. & Others" and implemented by the department. Moreover, vide Order/Judgment dated 15.2.2007 in OA No.102/06 this Hon'ble Tribunal on the basis of the Order/Judgment dt. 18.7.2002 not only condoned the delay in filing of OA but directed the applicant therein to be reinstated in Service forthwith.

5.14. Because the whole enquiry is in violation of principles of natural justice as the applicant was appointed by an IPS Officer but enquiry was initiated and final order of punishment was passed by respondent No.4 then DCP (3rd Bn. DAP) a DANIPS officer who had been given only JAG grade but was not an IPS Officer on 27.9.2002 when D.E. was initiated and on 10.9.2004 when final order of punishment was passed since as per OM dt. 7.8.1959 "an officer who was appointed by an officer of Group "A" while holding the charge of a division cannot be punished with any of the major penalties by an officer of PSS Group "B" though holding the charge of the same division. Such orders passed by a lower authority are void and are liable to be set aside...."

2. Disposing of the contention urged, in para 18 of the impugned decision, the Central Administrative Tribunal has observed as under:-

"18. His further contention that he was appointed by an IPS Officer and the punishment order was issued by DANIPS Officer

is baseless and also against the provisions contained in Section 21 (1) of the Delhi Police Act, 1978 which provides as under:

“Power of punishment – Subject to the provisions of article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:-

- (a) Dismissal;
- (b) To (g) x xxx”

3. Suffice would it be to state that the power under Section 21 (1) of the Delhi Police Act, 1978 is subject to the provisions of Article 311 of the Constitution of India and the rules, if any, framed.

4. With regret we note that the Tribunal has not dealt with the pleadings aforementioned and in particular the OM dated August 7, 1959 relied upon by the petitioner. The Tribunal has also not discussed its prior decision dated July 18, 2002, in O.A. No.1818/2001 relied upon by the petitioner.

5. Accordingly, with consent of parties we dispose of the writ petition remanding the matter to the Tribunal by reviving O.A. No.603/2010. The Tribunal shall decide the issue raised by the petitioner with respect to power of a DANIPS Officer to impose upon him the penalty of dismissal from Service by adverting to the pleadings, which in turn would require the Tribunal to take cognizance of the OM dated August 7, 1959 and the decision dated July 18, 2002 in O.A. No.1818/2001.

6. The impugned order passed by the Tribunal on July 4, 2011 is accordingly set aside. O.A. No. 603/2010 is restored for adjudication on the point mentioned above.”

3. In the background of the aforesaid direction of the High Court we will confine ourselves to the issue whether a DANIPS officer holding the post of DCP 3rd Bn. DAP could have imposed the penalty of dismissal from Service on the applicant when the applicant was appointed by an IPS officer, keeping in view the provision of Article 311 of the Constitution of India and the rules, if any, framed thereunder; OM dated 07.08.1959, and this Tribunal’s decision dated 18.07.2002 in OA No.1818/2001.

4. Sh. Anil Singal, learned counsel for applicant submits that the power of punishment conferred on Commissioner of Police, Addl. Commissioner of Police, Dy. Commissioner of Police, Addl. DCP, Principal and Police Training School etc. under Section 21 of the Delhi Police Act, 1978 (DP Act) is subject to Article 311 (1) which provides that “a Government employee cannot be dismissed or removed by an authority subordinate to that by which he was appointed”. In this case it is an admitted fact that the applicant was appointed by a DCP rank officer belonging to the IPS but the penalty of dismissal from Service was imposed by a DCP who was a JAG grade officer of DANIPS. He further submits that DANIPS was a Group-B Service and therefore, there cannot be any doubt that the disciplinary authority in this case was not competent to impose the penalty of dismissal from Service on the applicant when the latter was appointed by an IPS officer, a higher authority by virtue of belonging to Group A Service.

5. The learned counsel referred to a document filed at Annexure A-9 – D.G., P&T, Memo No.44/6/59-Disc., dated the 7th August, 1959 in support of his contention that the terms used in the Constitution and the CCS (CCA) Rules, namely, “Subordinate to” or “lower than” the Appointing Authority refer to subordination in rank and not to that of function. The aforesaid OM by way of an illustration has clarified that an official who was appointed by an officer of the Junior Time Scale of the Indian Postal Service, Group A, while holding charge of a Division cannot be punished with any of the major penalties by an officer of the PSS Group ‘B’, though

holding charge of the same Division. Referring to the Tribunal's order dated 04.07.2011 learned counsel states that the Tribunal had noted the contention of the applicant on this issue as well as the OM dated 07.08.1959 but did not deal with that contention beyond recording the submission of the learned counsel for the respondents in para 14 of the order. According to learned counsel, in the order dated 02.04.2013 the High Court had already taken a view that the Rules made under the DP Act cannot override the provisions of Article 311. Further, according to the learned counsel the OM dated 07.08.1959 issued by the Central Government exercising power under Art 309 of the Constitution would over-ride the provisions of the rules made by the Commissioner of Police under DP Act. He has further referred to the opinion of Legal Advisor to the Commissioner of Police in a letter dated 29.06.1998 in another case, holding the view that a JAG grade DANIPS officer could not exercise the power of either the appointing authority or the disciplinary authority. The Tribunal had taken cognizance of this fact in its order in OA 1818/2001 and in the order passed in OA 102/2006 and allowed those OAs. According to the leaned counsel the facts of the present case are similar to that in the aforesaid OAs and therefore the applicant was entitled to the relief claimed.

6. Per contra Ms. Rashmi Chopra, learned counsel for respondents contends that according to Delhi Police (Appointment and Recruitment) Rules (hereinafter referred to as the Rules) DCP, Addl. DCP, Principal/PTS and any other officer of equivalent rank can be the appointing authority for the rank of Constable. The Rules also

provide that the major penalties can be imposed by an officer not below the rank of appointing authority after a regular departmental enquiry. The Rules nowhere refer to the "Service" of the officer holding the post of DCP, Addl. DCP etc. Once an officer is holding any of these posts he will have the authority to exercise the power under Rule 4 (1) as well as Rule 6 (1). The learned counsel further states that the provision of Article 311 of the Constitution would not be attracted in this case as it cannot be said that a DANIPS officer holding the post of DCP is "an authority subordinate" to, or lower in rank than the IPS officer holding the same post earlier at the time of appointment of the applicant.

7. Learned counsel for the respondents further has argued that the OM dated 07.08.1959 was not applicable to the applicant because that clarification was given in the context of rule 12 of the CCS (CCA) Rules while the applicant is governed by the provisions of DP Act and the Rules made thereunder. Learned counsel submitted that the aforesaid clarification referred to the contingency where the power of the President for nominating an ad hoc disciplinary authority was to be invoked. In the present case, the disciplinary authority was not an ad hoc disciplinary authority but a regular appointee to the post of DCP. The illustration given in that OM was in the background of the P&T Department and the same will not hold good in the Police hierarchy which is different. Referring to the decision of the Tribunal in OA No.1818/2001, the learned counsel stated that in another OA No.1614/2001, this Tribunal vide order dated 30.01.2002 had taken a view that it was immaterial whether

the appellate authority belonged to IPS and the disciplinary authority did not belong to IPS as the same belong to the same rank. Therefore, the OA No.1818/2001 cannot be considered as a precedent because that order itself did not follow the precedent of OA No.1614/2001. The learned counsel further argued that in OA No.1818/2001 and OA No. 102/2006, which followed OA No.1818/2001, the Tribunal relied on the opinion of Legal Advisor to the Commissioner of Police given in another case in 1998 and did not give its own findings. Besides this, the disciplinary authority in OA 102/2006 was a JAG officer of DANIPS holding the current duty charge at the time of ordering disciplinary proceedings. In the present case, the disciplinary authority, though a JAG officer of DANIPS, was a Group A officer holding the charge of the post on regular basis and not on current duty charge basis. Learned counsel relied on **Distributors (Baroda) P. Ltd. Vs. Union of India and others**, (1985) 155 ITR 120 in support of her argument that the Tribunal can always correct the distortion caused by any of its earlier judgment on any issue and also the order of the High Court of Delhi in WP (C) no.13124/2009 dated 12.08.2011.

8. Heard the learned counsel for the parties. We have considered the submissions made by the learned counsels and carefully gone through the documents placed on record. The learned counsels restricted their arguments to the issue of the validity of the order of dismissal of the applicant passed by a DANIPS officer. The Hon'ble High Court of Delhi in its order dated 02.04.2013 while remanding this OA back to the Tribunal had directed that "the Tribunal shall decide the issue raised by the petitioner with respect to the power of

a DANIPS officer to impose upon him the penalty or dismissal by adverting to the pleadings, which in turn would require the Tribunal to take cognizance of the OM dated 07.08.1959 and the decision dated 18.07.2002 passed in OA no.1818/2001.”

9. The applicant has contended that the DE against him was initiated vide order dated 04.02.2008 by the respondent no.4, a DANIPS officer in JAG grade, who is not an IPS officer, and therefore not competent to pass the order of dismissal of Service of the applicant.

10. The relevant Rules and the Section 21 (1) of DP Act read as follows:

- The Rule 4 (1) of **Delhi Police (Appointment and Recruitment) Rules, 1980**, under the title “Appointing Authorities” contains the following provisions with regard to the authorities who are competent to make appointments in various subordinate ranks in Delhi Police:

<i>Class of Police Officers</i>	<i>Authority to whom the power of appointment is delegated</i>	<i>The extent of delegation</i>
<i>(i) Inspector</i>	<i>Addl. C.P.</i>	<i>Full powers subject to the rules framed hereunder.</i>
<i>(ii) Sub-Inspr.</i>	<i>(i) DCP (ii) Addl. DCP (iii) Principal/ PTS (iv) Any other officer of equivalent rank.</i>	<i>Do</i>
<i>(iii) ASI</i>	<i>Do</i>	<i>Do</i>
<i>(iv) H.C.</i>	<i>Do</i>	<i>Do</i>
<i>(v) Constables</i>	<i>Do</i>	<i>Do</i>

- Rule 5 of the Rules lists the following punishments as major penalties:

“(i) Dismissal, (ii) Removal from Service, (iii) Reduction in rank [for a specified period], (iv) Forfeiture of approved Service, (v) Reduction in pay, (vi) Withholding of increments, (vii) Fine not exceeding one month’s pay, (viii) Censure, (ix) Punishment drill not exceeding 15 days or fatigue duty or any other punishment duty to Constable only.”

- Rule 6(i) of the Rules, 1980 states that:

“Punishments mentioned at Serial Nos. (i) to (vii) above shall be deemed ‘major punishment’ [and may be awarded by an officer not below the rank of the appointing authority or above] after a regular departmental enquiry.”

- The section 21(1) of the Delhi Police Act provides:

“Power of punishment – Subject to the provisions of article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:-

(a) dismissal;

(b) to (g) x xxx”

11. It is not disputed that a DCP can award the penalty of dismissal on the applicant. The applicant’s contention is that there is a distinction between a DCP belonging to the IPS and a DCP belonging to DANIPS when it comes to the imposition of penalty of dismissal. According to him, the DCP belonging to DANIPS in the grade of JAG, cannot be equated with a DCP who is an IPS officer. We are of the view that once given regular charge as DCP, an officer will have all statutory powers irrespective of the Service to which the individual holding the post belongs to.

12. In WP (C) no.13124/2009, **ASI Jaipal Singh vs. Govt. of NCT of Delhi and ors.**, decided by Hon'ble High Court of Delhi on 12.08.2011, the dispute was whether the DCP (SR) was competent to pass the order of punishment under Section 21 of the DP Act when according to the distribution of work, the disciplinary matters had to be dealt only by the DCP (HQ). The view taken by the High Court was that according to Section 21 of the DP Act, a DCP was empowered to prescribe a penalty in respect of the persons of the status of the petitioner. The tenor of Section 21 could not be modified or restricted by a letter relied on by the petitioner, and therefore, it could not be held that the DCP whether HQ or SR were incompetent to pass penalty order. The relevant portion of that order is reproduced below:

“21. Another plea of the petitioner is that the punishment order issued against him was passed by an incompetent person. Relying on letter dated 4th July, 2003, it is contended that all the disciplinary matters had to be dealt only by the DCP (HQ), but the order of punishment was passed by the DCP (SR). The learned counsel for the petitioner has, however, not been able to dispute that under Section 21 of the Delhi Police Act, a Deputy Commissioner of Police is empowered to prescribe a penalty in respect of the persons of the status of the petitioner. **The tenor of section 21 cannot be modified or restricted by a letter relied on by the petitioner.** In the facts and circumstances and in view of section 21 of the Delhi Police Act, it cannot be held that the Deputy Commissioner, whether (HQ) or (SR), was incompetent to pass the penalty order and, consequently, the penalty order passed by Deputy Commissioner (SR) cannot be quashed on this sole ground. The learned counsel for the petitioner too did not press the plea much in view of Section 21 of the Delhi Police Act. Therefore, the order of the Tribunal on this plea cannot be faulted.”

(emphasis supplied)

13. In the present case, though the facts are not similar, the observation of the High Court is equally valid that we cannot read more in, or add to, Section 21 of the DP Act than what it explicitly provides, i.e., the section 21 does not distinguish between the Dy. Commissioners coming from different Services, be it IPS or DANIPS.

14. The learned counsel for the applicant has vehemently argued that the above provision in the rules framed under the DP Act even though may not make such distinction, cannot overrule the provisions of Article 311 of the Constitution. In fact, Section 21 starts with the words "Subject to the provisions of Article 311 of the Constitution and the rules". Thus in respect of the order of dismissal even if the DP Act and the Rules empower a DCP to pass orders, such powers of a DANIPS officer holding the post of DCP get truncated by the Art 311 when the employee concerned is appointed by an IPS officer.

15. In our view the learned counsel for the applicant has made certain sweeping generalisation that does not stand scrutiny of law. The question before us is whether a DANIPS officer holding the post of DCP can be considered as "an authority subordinate" to a DCP who belongs to IPS, within the meaning of Art 311 (1). Before we delve into this question further it is noted that the DANIPS officer in the present case, respondent no. 4, held the post of DCP on regular basis. To a pointed query whether the appointment order of respondent no.4 could be placed on record, learned counsel for the applicant stated that the aforementioned fact was not in dispute. From the pleadings we have not come across any submission that could show that a DANIPS officer holding the post of DCP is having less statutory powers than an IPS officer holding the post of DCP. It is trite that all statutory powers of the incumbent flow from the post which the person holds. The only situation in which these powers may be limited is when the person has been appointed on current

charge basis or look after charge basis. The argument of the learned counsel for the applicant that DANIPS is a Group-B Service would not be relevant in this case since Group-A or Group-B tag is given to an organised Service with reference to the status of a new entrant to the Service, at the time of the first appointment. It does not mean that a person belonging to a Service like DANIPS where the entry level post is in Group-B, will be confined to Group-B status throughout the career as can be seen from the grades and sanctioned strength given in the following table extracted from DANIPS rules:

<i>Grades and sanctioned strength of the Service</i>		
<i>(a)</i>	<i>Grades of the Service</i>	<i>Scales of pay</i>
1.	<i>Junior Administrative Grade I (Group A)</i>	<i>Rs.37400-67000+ GP 8700</i>
2.	<i>Junior Administrative Grade II (Group A)</i>	<i>Rs.15600-39100 + GP 7600</i>
3.	<i>Selection Grade (Group A)</i>	<i>Rs.15600-39100 + GP 6600</i>
4.	<i>Entry Grade (Group B)</i>	<i>(i) Rs.9300-34800+GP 4800</i> <i>(on initial appointment</i> <i>(ii) Rs.15600-39100 +GP 5400</i> <i>(on completion of 4 years approved Service subject to vigilance and integrity clearance).</i>

Details regarding promotion in the Service

<i>Sl No.</i>	<i>Grade</i>	<i>Method of Promotion</i>	<i>Eligibility for Promotion</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1.	<i>Junior Administrative Grade I</i>	<i>By promotion in the order of seniority subject to rejection of</i>	<i>A regularly appointed Junior Administrative Grade-II officer with</i>

		<i>unfit on the recommendations of the Departmental Promotion Committee.</i>	<i>a minimum of eighteen years approved Service shall be eligible to be considered for promotion to the Junior Administrative Grade I.</i>
2.	<i>Junior Administrative Grade II</i>	<i>By promotion on selection basis on the recommendations of the Departmental Promotion Committee.</i>	<i>A regularly appointed Selection Grade officer with a minimum of thirteen years of approved Service shall be eligible to be considered for promotion to the Junior Administrative Grade II.</i>
3.	<i>Selection Grade</i>	<i>By promotion in the order of seniority subject to rejection of unfit on the recommendations of the Departmental Promotion Committee.</i>	<i>A regularly appointed Entry Grade officer with a minimum of eight years approved Service shall be eligible to be considered for promotion to the Selection Grade.</i>

16. The entry grade to DANIPS is in Group-B and after 8 years of Service, a DANIPS officer is eligible to be considered for promotion to the selection grade, which is a Group-A post. A Selection Grade Officer after a minimum of 13 years of approved Service is considered for JAG Grade-II (Group-A) and with a minimum of 18 years of Service for JAG Grade-I (Group-A). Thus, a JAG officer of DANIPS is a Group A officer and cannot be treated as subordinate to an IPS officer only because he belongs to DANIPS. In terms of pay scales also JAG of DANIPS is not lesser than the comparable scales of the IPS:

“IPS scales upto selection grade

A. **Junior Scale**

Pay-Band - 3: Rs.15600-39100 plus **Grade Pay Rs.5400;**

B. **Senior Scale**

- (i) Senior Time Scale- Pay-Band - 3: Rs.15600-39100 plus **Grade Pay Rs.6600.**;
- (ii) Junior Administrative Grade Pay-Band - 3: Rs.15600-39100; plus **Grade Pay Rs.7600**;
- (iii) Selection Grade :- Pay-Band - 4: Rs.37400-67000; plus **Grade Pay Rs.8700;**

17. Another factor that needs to be kept in view is the fact that in a uniform Service like Police 'the rank' worn by the officer on the shoulder reflects his status. A DCP would put on the same rank on the shoulder irrespective of his Service. Lastly, in the context of Article 311 it cannot be said that a DCP of DANIPS is a "subordinate authority" to an DCP of IPS for all times to come. On the day the DCP belonging to IPS issued the appointment order of the applicant, he was DCP appointed by the competent authority and was competent to exercise powers under the statute as bestowed on the office of DCP. On the day of award of punishment of dismissal on the applicant the DCP belonging to DANIPS, a JAG (Group-A) officer, was appointed by a competent authority, empowered to exercise all the powers under the statute. While exercising such powers the statutes put no limitation originating from the antecedents of a person who held that post at some point in the past.

18. The Article 311 (1) has to be interpreted in terms of the hierarchy of the department in which the person is employed. If the appointing authority of the employee is a DCP, his dismissal order cannot be passed by an Additional DCP. Similarly, an employee appointed by an Additional DCP could not be dismissed by an Addl. DCP-II who was not promoted to the post of Addl. DCP, as advised by

Legal Advisor to the Commissioner of Police on 29.06.1998. The advice of the Legal Adviser is reproduced below:

“The post of Addl. DCP-II was created to accommodate the JAG Grade ACPs who were sanctioned the JAG Grade and were ordered to be appointed against the post of Adl. DCP. In that order it is neither mentioned that they have been promoted from the DANI cadre to the IPS or even promoted to Addl. DCP. There is no mention of the word promotion in their order of appointment. The matter was also previously examined at the instance of the CP and it was decided that the Addl. DCP who has been given JAG Grade cannot exercise the powers of either the appointing authority or the Disciplinary authority. Hence, in my opinion, Addl. DCP-II cannot exercise the powers of the Disciplinary authority under the Delhi Police (P&A) Rules, 1980”.

19. The L.A. had taken a view that Addl. DCP-II, who apparently passed the penalty order, was neither promoted to the cadre of IPS nor promoted to the post of Addl. DCP. There was no mention of the word ‘promotion’ in the order of his appointment. In the present case it is an admitted fact that the DANIPS officer who passed the order of dismissal, was holding the post of DCP on regular basis, which implies that he was promoted to that rank and scale of pay in his own Service.

20. We, therefore, do not find any substance in the argument that there is any conflict between Article 311 (1) and Section 21 (1) of the Delhi Police Act as laboriously stressed by the learned counsel for the applicant.

21. There is also a reference to the OM dated 07.08.1959 by the learned counsel for the applicant arguing that a clarification by the Government of India issued under Article 309 would have an overriding authority over the rules made by Commissioner of Police

deriving powers from the Delhi Police Act. The aforesaid instructions reads as follows:

“(2) When President’s power for nominating an ad hoc disciplinary authority to be invoked. - (i) When the appointing authority is higher in rank - The terms used in the constitution and the CCS (CCA) Rules, viz., “Subordinate to” or “lower than” the Appointing Authority refer to subordination in rank and not to that of function. In view of the provisions referred to above, the authority who has been prescribed in the schedule to CCS (CCA) Rules as the disciplinary authority for imposition of major penalties in respect of a grade shall not impose any of these penalties on an official of that grade if he was actually appointed to that grade by an authority who is higher in rank or grade than the former authority.

For example, *an official who was appointed by an officer of the Junior Time Scale of the Indian Postal Service, Group ‘A’, while holding charge of a Division cannot be punished with any of the major penalties by an officer of PSS Group ‘B’ though holding the charge of the same Division.* Any such orders passed by a lower authority are void and are liable to be set aside. When these punishment orders are declared void by the Court or are set aside by the appellate authority or by the President due to violation of constitutional/statutory provision, Government have to incur unnecessary expenditure in the shape of arrears of pay and allowances. It is, therefore, desirable that before any action is initiated under the CCS (CCA) Rules, with a view to imposing any of the major penalties on an official, it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority, the fact should be reported to the Department/Ministry concerned for issue of President’s orders nominating another officer to act as the disciplinary authority in that particular case. While reporting the matter to Government a specific recommendation as to the officer who may be nominated to act as the disciplinary authority should be made.

These instructions may kindly be circulated to all disciplinary authorities for strict observance to ensure that punishment orders are passed only by the competent authorities.

(D.G.P&T. Memo No.44/6/59-Disc., dated the 7th August, 1959)”

22. A perusal of the above OM would show that as far as the first para is concerned, nothing new has been stated except the provision contained in Article 311 of the Constitution and the CCS (CCA) Rules and does not add anything further in support of the argument of the applicant. The main reliance of the applicant is on the example quoted in the second para of the aforementioned instructions. We do

not find this illustration to be relevant in the present case for the following reasons:-

(a) This OM has been issued by the Director General, Post and Telegraph considering the hierarchy prevailing and the practice followed in that department in the year 1959. From the example given in the aforesaid OM it is not clear whether it refers to an officer of the PSS Group-B holding the charge of the same division on regular basis or on current charge basis. It also does not clarify whether the PSS officer even though belonging to a Service Group-B entry level had reached the Group-A scale at the time of holding the charge of a division and whether the officers of PSS Group B could rise to Group A level in their own Service in those days.

(b) For any such clarification or interpretation to be binding under Art 309, the same is required to be issued by the nodal department of the Government of India for such matters, i.e. the Department of Personnel and Administrative Reforms.

(c) The police are a uniformed Service where the rank is visible on the uniform of the officer which is not the case with the P&T Department. In Police department it has to be ensured that the men under the command of an officer do not get an impression that the statutory powers of the DCP/Commanding Officer emanate not from the rank and the position he holds but from the Service to which he belongs.

23. We have perused the order of this Tribunal in OA No.1818/2001 dated 18.07.2002. For the sake of convenience the order dated 18.07.2002 is reproduced below:

“Heard both the counsel and perused the records.

2. The admitted facts of the case are that by order dated 4.4.2000, a regular department enquiry was ordered under Delhi Police (Punishment & Appeal) Rules, 1980 against the applicant on the allegation that on 6.3.2000 the applicant along with two other officials of PCR van has extorted money of Rs.200/- from one Shri Ravinder Kumar (complainant) and, on complaint, returned the same back to the complainant on his assurance that he will withdraw his complaint. The inquiry officer submitted his findings to the effect that the charge was fully proved without any shadow of doubt against the applicant. Agreeing with the findings of the IO, the disciplinary authority (DA) vide its order dated 22.9.2000 imposed upon the applicant the punishment of dismissal from Service. Applicant made an appeal against the dismissal order on 2.10.2000. the appellate authority, vide its order dated 15.2.2001, modified the punishment to the extent of forfeiture of applicant's 10 years approved Service entailing subsequent reduction in his pay with cumulative effect and that he will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing their future increments of pay. It was also indicated therein that the intervening period in respect of the applicant from the date of dismissal to the date of joining the duty shall be treated as LKD. Aggrieved by this, applicant is before us seeking directions to quash and set aside the order of initiation of DE dated 4/2/200, findings of IO dated NIL, punishment order dated 22.9.2000 and appellate order dated 15.2.2001. He has also sought directions to the respondents to restore his withheld increments and treat the period of suspension as spent on duty for all intents and purposes with all consequential benefits.
3. During the course of the arguments, the learned counsel for the applicant has taken the following grounds in support of the reliefs prayed for by him.
 - (i) No prior approval of the Addl. Commissioner of Police was sought before ordering DE which is in violation of the provisions of Rule 15 (2) of Delhi Police (P&A) Rules, 1980. The said rule stipulates that in cases in which the preliminary enquiry discloses the commission of a cognizable offence by police officer of subordinate rank, DE shall be ordered after obtaining prior approval of ACP concerned as to whether a criminal case should be registered and investigated or a DE should be held.
 - (ii) EO illegally cross-examined the PW and all DWs and thus exceeded his jurisdiction and without any competence assumed the role of prosecutor;
 - (iii) **ACP is not competent to pass the order of punishment which is in violation of Article 311 (1) of the Constitution of India as ACP (PCR) had been given on Junior Administrative Grade and he cannot exercise the powers of DA as has been opined very clearly in letter dated 29.6.98 from LA to CP, Delhi in his office memo addressed to DCP North District.**

In support of the aforesaid contentions, the applicant has drawn our attention to the judgments of this Tribunal in OA 1654/96 dated 25.2.2000, OA 169/99 dated 1.11.2000 and OA 157/2002 dated 17.4.2002.

4. On the other hand, the learned counsel for respondents has submitted that (i) there was no need to obtain prior approval under Rule 15 (2) of Delhi Police (P&A) Rules, 1980, (ii) as per Rule 15 (2) of Delhi Police (P&A) Rules, 1980 EO can also frame question which he may wish to put to witnesses to clear ambiguities or to test their veracity and **(iii) LA's opinion cannot nullify the orders of LG, Delhi appointing Addl. DCP (PCR) vide order dated 7.11.97. His opinion cannot supersede the rules legally framed on the subject.**

5. We have gone through the judgements cited by the applicant (supra) and **we find that the grounds taken by the present applicant have been discussed in detail in the aforesaid judgements keeping in view the ratio arrived at by the apex court in their various judgements on the subject. These grounds taken by the respondents in the said OAs were rejected by the Tribunal and the OAs were allowed.** That apart, Rule 15 (2) of the Delhi Police (P&A) Rules, 1980 clearly stipulates that in the cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, DE shall be ordered after obtaining prior approval of the Addl. CP. **We also find the letter dated 29.6.98 from Legal Advisor to CP, Delhi makes it abundantly clear regarding the appointing/disciplinary authority in case of the applicant, which is extracted below:**

“The post of Addl. DCP-II was created to accommodate the JAG Grade ACPs who were sanctioned the JAG Grade and were ordered to be appointed against the post of Adl. DCP. In that order it is neither mentioned that they have been promoted from the DANI cadre to the IPS or even promoted to Addl. DCP. There is no mention of the word promotion in their order of appointment. The matter was also previously examined at the instance of the CP and it was decided that the Addl. DCP who has been given JAG Grade cannot exercise the powers of either the appointing authority or the Disciplinary authority. Hence, in my opinion, Addl. DCP-II cannot exercise the powers of the Disciplinary authority under the Delhi Police (P&A) Rules, 1980.”

6. **Though respondents' counsel has stated that LA's opinion cannot nullify the orders of LG, Delhi appointing Addl. DCP/PCR vide order dated 7.11.97, he has failed to produce a copy of the said letter.** Moreover, LA had issued the aforesaid letter on 29.6.98, i.e. much later than 7.11.97, which is vital for the present case.

7. In view of this position, we hold that the entire enquiry is vitiated and the impugned orders issued thereafter are not tenable in the eyes of law.

8. Therefore, in view of what has been discussed above and having regard to the Tribunal's judgements cited supra, we allow the present OA and quash and set aside the order dated 22.9.2000 passed by the disciplinary authority and order dated 15.2.2001 passed by the Appellate authority. The case is remitted back to the appropriate DA

for holding a fresh enquiry after obtaining the approval of Additional Commissioner of Police as required under Rule 15 (2) of Delhi Police (D&A) Rules, 1980, if so advised, and for passing appropriate orders accordingly. This shall be done as expeditiously as possible. No costs.”

(the portions dealing with the DANIPS/IPS issue have been shown in bold)

24. In the above quoted case, one of the ground taken by the applicant was that ACP (PCR) in JAG grade of DANIPS, could not have exercised the powers of disciplinary authority as had been opined by LA to CP in the letter dated 29.06.1998. As discussed earlier, the opinion of LA was based on the fact that the ACP who had acted as disciplinary authority had neither been inducted into IPS from DANIPS cadre nor had “been promoted to Addl. DCP”. Though the facts with regard to status of the disciplinary authority have not been mentioned or discussed in the aforementioned order, apparently the factual matrix in OA No.1818/2001 conformed to the one mentioned in the letter of LA to CP because of which the Tribunal relied on the same while allowing the OA. If the facts were not similar, the opinion of the LA to CP would not be relevant at all. In such a case we cannot consider the order in OA 1818/2001 as a binding precedent as the Tribunal has neither recorded its own finding referring to the specific facts of the case nor it has given a general finding that a police person appointed by an IPS officer cannot be dismissed by a DANIP officer even when he is holding a Group A post on regular basis. We are, therefore, of the view that the order in OA 1818/2001 would not be applicable in the present case.

25. The learned counsel for the applicant has also relied on the order of this Tribunal in OA No.102/2006 dated 15.02.2007 in which this Tribunal had relied on the order dated 18.07.2002 in OA

No.1818/2001. In this case also the disciplinary authority was holding the post on current duty charge basis. The relevant paras of that order is reproduced below:

“8. Having regard to the above, learned counsel would contend that one **Shri ArunKampani, who was a JAG officer and was holding the current duty charge of the post** on 21.4.1999, ordered disciplinary proceedings against the applicant and **the final order passed by one Shri Anil Kumar Ojha, Addl. Dy. Commissioner of Police, Central District, who was also not a regular DCP**. Accordingly, the applicant, who had been appointed in the year 2001 by a regularly appointed DCP/Addl. DCP, cannot be removed by an incompetent authority, which has no jurisdiction to impose the punishment. In such view of the matter, it is stated that being squarely covered by the decision of the Tribunal, the applicant has to be reinstated back in Service with all consequential benefits.

Xxx xxx xxx

13. Insofar as the person holding a current duty charge of a post is concerned, G.I., MHA, OM No.F/7/14/61-Ests.(A) dated 24.1.1963, which is decided in consultation with Ministry of Law, provides that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers. Moreover, we in agreement with the decision in **Const. Suresh Kumar's** case (supra), which has been implemented by the respondents, find that a JAG officer still remains as a DANICS officer and as such has no jurisdiction to act as a disciplinary authority or to exercise statutory powers. In such view of the matter, an order passed by the disciplinary authority in the present case initiating the inquiry by another disciplinary authority to impose upon the applicant a major penalty under Rule 8 of Delhi Police (Punishment & Appeal) Rules, 1965 is without jurisdiction and incompetent.”

(emphasis supplied)

We, therefore, do not find this order to be of any assistance to the case of the applicant in the present OA.

26. Learned counsel for the respondents has cited **Distributors (Baroda) P. Ltd.** (supra). We are in agreement with the learned counsel for the applicant that in this judgment a bench of 5 Hon'ble Judges of the Supreme Court had taken a different view than the view taken by a bench consisting of 3 Hon'ble Judges of the Court. This judgment is not relevant in the present context. In any case we

are not taking any view different from the view taken by this Tribunal in the earlier orders.

27. Learned counsel for the respondents also relied on the order of this Tribunal dated 30.01.2002 in OA No.1614/2001 in which this Tribunal had taken a view that it was immaterial that the appointing authority belonged to IPS and the disciplinary authority did not belong to IPS as both of them held the same rank. The relevant portion of the order is reproduced below:

“7. The learned counsel of the applicant also contended that whereas the applicant was appointed by an IPS officer the disciplinary authority is subordinate in rank to the appointing authority, as he is not an IPS officer. From the face on record, we find that the appointing authority as well as the disciplinary authority were holding the rank of Deputy Commissioner of Police. It is immaterial that the appointing authority belonged to IPS and the disciplinary authority did not belong to IPS as both of them held the same rank. Accordingly, in our view, this objection too does not carry any weight with us.”

28. In the light of the discussion in the preceding paras, the rule position and the law, we are of the view that OA is without merit and the same is dismissed. No costs.

(V.N. Gaur)
Member (A)

(Justice B.P. Katakey)
Member (J)

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