

**Central Administrative Tribunal
Principal Bench:New Delhi**

OA No.2360/2014

Reserved on :16.07.2015
Pronounced on:17.12.2015

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Jeetu Wede S/o Shri Shesherao
Ex. Constable, Delhi Police
R/o House No.13/1, Gali No.3,
Ajit Vihar, Burari, Delhi-110 084
Last employed Delhi Police

(By Advocate: Dr. M.P.Raju)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Lt. Governor,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.
3. The Commissioner of Police,
Police Headquarters
IP Estate, New Delhi-2.
4. Special Commissioner of Police,
Armed Police
Police Head Quarters
IP Estate, New Delhi-2.
5. Dy. Commissioner of Police
III Bn, DAP, New Delhi.Respondents.

(By Advocate: Ms. Sangita Rai)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA, who was a Constable in Delhi Police, is aggrieved by the order of punishment awarded to him by the Disciplinary

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Authority through order dated 22.05.2013 (Annexure-I), and rejection of his appeal later on by the Appellate Authority through order dated 24.12.2013 (Annexure-II). He had also submitted a representation to the Hon'ble Lt. Governor, Delhi, which representation was rejected and the rejection was communicated to him through Annexure-III dated 01.05.2014. In the prayer portion of the OA, he has also challenged an order dated 04.09.2002, passed by the Hon'ble Lt. Governor, Delhi, which has been referred to in the impugned order, though a copy of the same has not been supplied to him.

The applicant has prayed for the following reliefs:

"i) Call for the records and declare, quash and set aside the impugned orders dated 22/5/2013, 24/12/2013 and 1/5/2014, vide Annexure I, II and III respectively as ultra vires, without jurisdiction, illegal, vitiated by malice in fact and malice in law, having been passed without affording any opportunity of being heard thus violating the principle of natural justice, being arbitrary, unreasonable, unfair, discriminatory and violative of the fundamental rights of the applicant under Articles 14, 16 and 21 r/w Article 311 of the Constitution of India.

ii) Call for the records relating to the order dated 4/9/02 passed by the Hon'ble Lt. Governor, Delhi, respondent no.2, in the case of the applicant as referred to paragraph 3 of the impugned order dated 22/5/2013 which has already been annexed as Annexure-I, including the said order dated 4/9/02 and declare, quash and set aside the order dated 4/9/02 as ultra vires, without jurisdiction, illegal, vitiated by malice in fact and malice in law, having been passed without affording any opportunity of being heard thus violating the principle of natural justice, being arbitrary, unreasonable, unfair, discriminatory and violative of the fundamental rights of the applicant under Articles 14, 16 and 21 r/w Article 311 of the Constitution of India.

iii) Direct the respondents to reinstate the applicant with all consequential benefits including continuity of service, back wages and all promotional and other benefits.

iv) Award the cost of the application including exemplary and punitive cost in favour of the applicant.

v) Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

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2. The applicant had also prayed for certain interim reliefs, but they were not considered during the pendency of the OA.

3. The case of the applicant is that he had joined Delhi Police as a Constable on 15.07.1996, and was working with devotion in performing his duties. Prior to his joining in Delhi Police, he had been named as an accused in a case in the State of Maharashtra, and an FIR No.37/92 had been registered under Sections 147/148/149/302/323/34 IPC in the Police Station Ambajogai. He had been tried and acquitted of all the charges against him through order dated 19.04.1995 passed by the Additional Sessions Judge, Ambajogai, through Annexure-IV (Pages 47 to 77 of the Paper Book).

4. At the time of his selection, the applicant was required to submit an attestation form, and there was a question inviting "yes" or "no" answer as to whether the applicant had ever been involved and convicted in a criminal case. The applicant's claim is that he reasonably understood the question as to whether he was involved and convicted in a criminal case, and not as to whether he was involved and acquitted in a criminal case, and on the basis of that bonafide understanding, he answered that question in the negative, since he already stood acquitted in the criminal case.

5. He has also submitted that there was another question in the attestation form as to whether any case is pending against him before any Court, but there was no question as to whether the candidate was ever involved and acquitted in a criminal case, which created confusion in his mind. He has submitted that there was no intention on his part to conceal the facts regarding his involvement/acquittal in the criminal case, but only because the relevant question was a composite question, and no reasonable

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person could have understood such question inviting "yes" or "no" as to be a question requiring an answer "yes" even in the case of an acquittal, and the applicant being a Marathi speaking person, and having had his schooling in Marathi medium, had answered that question in Hindi in the negative.

6. However, upon verification of the aforesaid allegations, his services were terminated by the Additional DCP, West District, Delhi through Annexure-V dated 28.02.1997 (Page 78 of the OA). Against that termination order, the applicant represented to the Respondent No.3, i.e. Commissioner of Police, on 20.04.1997. Since no response was forthcoming from the Respondent No.3, he had filed an OA No.713/1998, which was disposed of by this Tribunal, vide order dated 22.04.1998, directing the respondents to dispose of his representation, by passing a reasoned and speaking order. After that, the applicant submitted another copy of his representation dated 20.04.1997 on 17.06.1998, and again on 13.07.1998. Thereafter, the DCP (Headquarters), Delhi, recommended to the DCP, West District, Delhi, through Annexure-VIII dated 20.07.1999 that his representation had been accepted by the Commissioner of Police, and he may be reinstated in service, as temporary Constable, and ordered that if the Disciplinary Authority so deems fit, he may be proceeded against departmentally for the concealment of facts, and awarded punishment as warranted. It is seen from Annexure-VIII that a copy of the same had also been marked to the learned counsel for the applicant, who has argued his present OA before us.

7. With reference to the letter dated 17.08.1998, addressed to the DCP West District, Delhi, the DCP still had doubts regarding taking the applicant back to duty. However, those doubts were replied to and clarified by the DCP

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(Headquarters) through Annexure-IX dated 17.08.1998, after which the Additional DCP, West District, Delhi had issued an order dated 24.08.1998 (Annexure-X), reinstating the applicant back in service as a temporary Constable, and ordering that the intervening period, i.e. the period from the date of termination of his services to the date of issuance of that order will be treated as period spent on duty.

8. Simultaneously, a departmental enquiry was also initiated against the applicant in respect of allegations of misconduct, negligence and concealment of facts at the time of recruitment, vide order dated 27.01.1999 (Annexure-XI). The Enquiry Officer issued to him a Memo through Annexure XII (colly) dated 13.02.1999, serving upon him the summary of allegations. On completion of that enquiry, the report of the proceedings was submitted by the Enquiry Officer through Annexure-XIII dated 06.08.1999 (colly), and the findings of the Enquiry Officer had held that the charge of concealment of facts stood proved. The Disciplinary Authority, thereafter, passed an order of punishment through Annexure-XIV dated 09.09.1999, imposing a penalty of withholding of two increments for two years, with cumulative effect. The applicant did not submit any appeal against that order, as per records filed in the present O.A., and accepted the punishment inflicted upon him.

9. After a gap of many years, the applicant was again visited with a punishment. After his being aggrieved by the impugned order Annexure-I, dated 22.05.2013, terminating his services once again, the applicant filed his appeal through Annexure-XV dated 03.06.2013. His appeal was ultimately rejected on 24.12.2013, which rejection of his appeal by the Appellate Authority has also been challenged by the applicant in the present O.A. As

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mentioned in these orders, while considering the appeal/mercy petition/representation filed by one Vikas Kumar, former Constable for reinstatement of his service, the Lt. Governor, Delhi, had on 04.09.2002 referred to the present applicant's case, and had come to the conclusion that the present applicant also deserved to be removed from service.

10. The applicant has assailed the action of the respondents in having passed the present impugned order dated 22.05.2013, Annexure-I, removing him from service, by withdrawing the earlier order of punishment dated 09.09.1999. He has also questioned the order passed by the Lt. Governor, who ought to have come to the conclusion that charges against the applicant are grave in nature, and he should be removed from service, and further that his removal from service was not based upon the conclusion of any departmental enquiry initiated against him. He has repeatedly submitted in the OA that in the question asked in the attestation form, he could not have answered "Yes", and has again and again relied upon the aspect of Hindi not being his mother tongue. The applicant has maintained that the alleged concealment of facts in the attestation form filled by him, did not amount to a gross misconduct at all, and was at best a negligence, and that since that attestation form did not contain any question relating to the candidate's involvement/ acquittal in a criminal case, the respondents ought to have framed that as a separate or a subsidiary question. In the result, the applicant has sought the reliefs, as already reproduced above.

11. The respondents filed their counter reply on 14.10.2014. They explained the circumstances, in which the services of the applicant were first terminated on 28.02.1997, under the provision of Rule 5 (1) of the CCS (Temporary Service) Rules, 1965, and then explained that when this

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Tribunal, vide its order dated 22.04.1998 in his earlier OA No.713/1998, directed the respondents to dispose off his representation, by passing a reasoned and speaking order, the applicant's representation was accepted by the Commissioner of Police, leading to his reinstatement in service vide order dated 24.08.1998. They also explained the facts relating to the subsequent institution of the disciplinary enquiry, and the findings of the Enquiry Officer, and submitted that the Disciplinary Authority, agreeing with the findings of the Enquiry Officer, had awarded the punishment of withholding of two increments for a period two years, without cumulative effect, through the order dated 09.08.1999, as already noted by us above.

12. The respondents thereafter explained as to how, while considering the mercy petition of another Constable Vikas Kumar, whose services were similarly terminated from Delhi Police, but who had been subsequently reinstated in service, the Lt. Governor, Delhi, could comment upon the case of the applicant in his order dated 04.09.2002, as follows:

".....The case of Sh. Jeetu Shesherao and two other similar cases wherein termination had ensued but subsequently the persons were reportedly reinstated. It is quite apparent that the default of the Sh. Jeetu Shesherao who was involved in a case of murder is clearly graver than that of Shri Vikas Kumar who was involved in only a case of hurt. The fact of concealment by Sh. Jeetu Shesherao therefore has far more serious implications for the well laid down recruitment procedure and it would certainly be unfair and against the public interest to condone such serious aberrations. The then Commissioner of Police has evidently made an error of Judgment while considering the matter and has shown leniency not deserved in the case, especially in view of the consistent practice and the large number of precedents to the country. In my considered view, the needs of consistency, fairness and transparency in the recruitment procedure and the public interest will be adequately served if, like all other similar defaulters, Sh. Jeetu Shesherao is also removed from service.

(Emphasis supplied).

13. The Order of the then Hon'ble Lt. Governor, Delhi, dated 04/09/2002 has been further cited in Annexure-I to have also observed as follows:

"In the said order of Hon'ble Lt. Governor, Delhi it has been recorded that this is not being dealt as a case of delinquency by a serving official as the said offence pertains to the stage of recruitment. As such, the Delhi Police (Punishment & Appeal) Rules, 1980 are not attracted. The question of validity or otherwise of Rule – 25 (B) of the said rules also is not germane to the case. So, the orders of the Central Administrative Tribunal striking down rule 25 (B) of the said rules in specific cases has no bearing on **the issue which essentially is to uphold the sanctity, fairness and consistency of the recruitment process, especially of a disciplined and uniformed force, and to deal effectively and objectively with any violation which may threaten to upset or vitiate it.**"

(Emphasis supplied).

14. It was submitted by the respondents that the matter was then examined by the Police Headquarters in consultation with the Legal Officer to the Commissioner of Police, whose advice was as follows:

"....the orders of the Hon'ble Lt. Governor, Delhi dated 04/09/2002 may be implemented thereby removing the applicant from service with immediate effect after withdrawing the earlier punishment of withholding of two increments for a period of two years without cumulative effect earlier awarded to him by Addl. DCP/West Distt., Delhi vide order No.12618-58/P(W), dated 09/09/99."

15. Thereafter, in compliance of the Police Headquarters' direction dated 10.05.2013, the earlier order of punishment of withholding of two increments for a period of two years, without cumulative effect, inflicted upon the applicant by the Additional DCP/West Distt, through order dated 09.09.1999, was withdrawn, and the applicant was removed from service by the Disciplinary Authority through the impugned order at Annexure-I dated 22.05.2013. As already noted, the Appellate Authority rejected the

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applicant's appeal at Annexure XV dated 03.06.2013 through the order dated 24.12.2013 (Annexure-II).

16. Being aggrieved by these two orders, the applicant filed a representation before the Hon'ble Lt. Governor, Delhi, already mentioned above, which was considered and rejected, and an intimation in this regard was issued to the applicant through Annexure R-2 dated 01.05.2014. It was submitted that as per Rule 25C of the Delhi Police (Punishment and Appeal) Rules, 1980, (DPPA Rules, 1980, in short) the Hon'ble Lt. Governor, Delhi, being the Administrator, is vested with powers that he may, at any time, on his own motion, or otherwise, call for the records of any case decided by the Commissioner of Police, and confirm, modify or annul the order passed in it. It was, therefore, submitted that the order passed by the Hon'ble Lt. Governor, Delhi, to order for removal of the applicant also from service, while disposing of the mercy petition of the said Shri Vikas Kumar for consideration of his case to reinstate him in service, was fully justified, and within the ambit of the DPPA Rules.

17. It was further submitted that the directions of the Lt. Governor, Delhi dated 04.09.2002, were absolutely clear-cut and unambiguous. He had called for the file of the applicant, examined it, and then passed the order, as has been stated above, pointing out that the then Commissioner of Police had evidently made an error of judgment while considering the matter, and had shown leniency which was not deserved in this case, especially in view of the consistent practice followed in a large number of cases, which provided the precedents to the contrary. As quoted by the Respondents in the impugned orders, it was opined by the Hon'ble Lt. Governor that "the needs of consistency, fairness and transparency in the recruitment

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procedure and the public interest would be adequately served if, like all other similar defaulters, the applicant is also removed from service".

18. It was submitted that the order passed by the Hon'ble Lt. Governor under Rule 25C of the DPPA Rules, 1980, had the effect to over-rule the order passed earlier by the Disciplinary Authority and the Appellate Authority of the present applicant on the directions under Rule 25B of the then Commissioner of Police. It was further submitted that the punishment imposed upon the applicant was commensurate to the gravity of his misconduct. It was further submitted that the each and every Government servant has to face the consequences of the misconduct committed by him in an individual capacity, and that none of the rights of the applicant have been trampled upon, when, on the directions of the Lt. Governor issued under Rule 25C, the applicant was removed from service by the Disciplinary Authority.

19. It was further submitted that when an order is passed by the Hon'ble Lt. Governor under Rule 25C of the DPPA Rules, 1980, Rule 16 of the said Rules does not become applicable, and no question arises to initiate any fresh departmental enquiry against the applicant. It was further submitted that in order to implement the order of the Lt. Governor under Rule 25C imposing the punishment upon the applicant, the Disciplinary Authority had first withdrawn the earlier order of punishment of the applicant, and, therefore, there has been no violation of any Articles of the Constitution, and that the applicant was rightly punished for his misconduct. It was, therefore, prayed that the O.A. is devoid of any merits, and deserves to be dismissed with costs against the applicant.

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20. The applicant filed his rejoinder on 02.12.2014, more or less reiterating his contentions that since he had already been acquitted in the criminal case, and the answer to the question in the attestation form should have been in the negative only, there was nothing wrong in his having filled up the attestation form, as he had filled. It was submitted that the respondents have actually admitted lack of jurisdiction, but now they are trying to take shelter behind the order of the Hon'ble Lt. Governor, Delhi, who had only passed an order in another person's case. It was submitted that there is no provision in the Delhi Police Act, 1978, to grant any power or jurisdiction to the respondents to pass any order in the nature of the impugned orders, and that they are wrongly claiming the jurisdiction, in view of order dated 04.09.2002 passed by the Hon'ble Lt. Governor, which was *non est* in the eyes of law, since no notice or opportunity to defend his case was given to the applicant by the respondents, or by the Hon'ble Lt. Governor, Delhi, before passing the said order dated 04.09.2002.

21. It was further submitted that the impugned orders at Annexures A-I, A-II and A-III were not passed under any of the provisions of law, but purely on dictation, as specifically directed by the Hon'ble Lt. Governor, Delhi. It was submitted that on this ground alone, the impugned orders are nullity in the eyes of law, and that the impugned orders are utterly arbitrary, which will shock anybody's conscience, and especially the conscience of this Tribunal.

22. Distinguishing the case of the applicant from the case of the said Shri Vikas Kumar, it was said that Vikas Kumar was proceeded under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, and his services were terminated, while the applicant's case was proceeded under the provisions of Sections 21

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and 22 of the Delhi Police Act, 1978, read with DPPA Rules, 1980, and the Enquiry Officer had only found a minor part of the charges as having been proved, and that penalty based thereupon had also been imposed on him way back in the year 1999, vide order dated 09.09.1999.

23. It was further submitted that the Disciplinary and the Appellate Authorities had themselves admitted that they did not have any jurisdiction under Rule 25B or 25C of the DPPA Rules, 1980, to review or enhance the punishment already awarded. It was submitted that the Rule 25B had already been set aside, and Rule 25C could not have been resorted to the applicant's case. It was submitted that there was total lack of jurisdiction on the part of respondents to pass any orders of the type of the impugned orders, as had been held by the Delhi High Court in the case of **Union of India & Others vs. Ex. Constable/Driver Dalvir Singh**, CWP No.2731 of 2002 decided on 17.09.2002, and also in the case of **Commissioner of Police vs. Anil Kumar Yadav**, 2003 (1) AD (Delhi) 486.

24. It was submitted that the Supreme Court had also reiterated the lack of jurisdiction on the part of the respondents to pass any orders of the type of the impugned orders in the present case, in the cases of **Motiram Deka vs. North East Frontier Railway**, (1964) 5 SCR 683 and in **State of Mysore and Others vs. H.D. Kolkar**, (1974) 3 SCC 486.

25. It was submitted that the respondents have admitted that the principles of natural justice were not followed before passing the impugned orders, and, therefore, non-following of the principles of natural justice was a violation of not only the provisions of Sections 21 to 23 of the Delhi Police Act, 1978, and the DPPA Rules, 1980, but also a clear violation of the Article

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of 311 of the Constitution. It was further submitted that the facts admitted by the respondents themselves clearly disclose that the respondents had become *functus Officio* after having passed the earlier punishment orders, and, therefore, they had no power or jurisdiction to pass any of the impugned orders.

26. It was denied that the order/action of Hon'ble Lt. Governor, Delhi, to mention the case of the applicant and order for his removal from service while disposing of the mercy petition of somebody else, was justified, and within the ambit of Rule 25C of the DPPA Rules, 1980.

27. It was submitted that even the said provision under Rule 25C of the DPPA Rules, 1980, does not grant any such power or jurisdiction to the Hon'ble Lt. Governor of Delhi to pass any such order as in the present case. It was submitted that the power under Rule 25C is limited only to confirm, modify, or annul the punishment order, that too after calling for the records, and after notice to the concerned officer/employee, and that this power is meant only to pass an order in favour of the concerned officer/employee, and not an order unfavourable to him, or to enhance the punishment, or for directing any authority to pass any order of punishment. It was submitted that the powers under Rule 25C of the DPPA Rules, 1980, could not have been exercised in his case at all.

28. It was submitted that the orders in the present case are to be read and understood on the face of it, and not on the basis of the explanations or interpretations supplied in any pleadings in a Court, or any subsequent explanations. It was, therefore, reiterated that the applicant was wrongly removed from service, and that the actions of the respondents, including the

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action of the Hon'ble Lt. Governor, Delhi, were not within the ambit of the Rules.

29. It was further submitted that while passing the impugned orders, the Disciplinary Authority has failed to appreciate that the observation of the Hon'ble Lt. Governor, Delhi, could not have been applied to the applicant's case, and that no order qua the applicant, which would adversely affect the applicant, could have been passed even by the Hon'ble Lt. Governor, Delhi, when the applicant's case was not pending consideration before the Hon'ble Lt. Governor, Delhi. It was, therefore, submitted that the department had committed an act of illegality in removing the applicant from service by taking shelter behind the orders of the Hon'ble Lt. Governor, Delhi, who himself had also erred in making comparison of the applicant's case with the case of another person.

30. It was submitted that when at the initial stage, the department had proceeded to conduct the departmental enquiry against the applicant, which had culminated into infliction of punishment of withholding of two increments vide order dated 09.09.1999, later on they could not have bypassed the principles of natural justice, and passed the impugned orders dated 22.05.2013, imposing the deterrent punishment for his removal from service, even without giving him an opportunity of being heard. It was denied that there is no violation of any rule on the part of the Disciplinary Authorities while inflicting the punishment in question upon the applicant. It was submitted that awarding such harsh punishment, in such a manner, after more than 16 years, is not warranted by the provisions of law, as well as canons of justice.

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31. It was denied that there is no violation of any article of the Constitution. It was submitted that the impugned order of punishment is not only in violation of Articles 14, 16 20(2), 21, 311 of the Constitution, but the same is also in violation of the provisions of Section 300 Cr.P.C., which has been discussed by the Supreme Court in the case of **Koll Veera Gorantala** (Citation not provided), in which it was held that "no one shall be vexed twice for the same cause of action".

32. It was submitted that all the impugned orders were without any jurisdiction, since no provisions under law, not even any provision of law under Delhi Police Act, 1978, or the Rules made thereunder, authorize the Dy. Commissioner of Police, or any other authority, to withdraw an earlier order of punishment, and to pass fresh orders of punishment, which fresh order is a nullity in the eyes of law. It was, therefore, prayed that this Tribunal may allow the OA, and grant the reliefs, as prayed for in the OA.

33. Heard. Along with the oral arguments, learned counsel for the applicant had filed a compilation of the judgments relied upon by him. Both the learned counsel very vehemently argued the case, on the lines of their pleadings.

34. Learned counsel for the applicant reiterated that once having passed the order imposing a penalty upon the applicant, both the Disciplinary Authority and the Appellate Authority had become *functus officio*, and they could not have acted later on, and withdrawn the earlier orders passed by them, and issued a fresh order of penalty against the applicant, which was void in the eyes of law. He relied upon the Supreme Court's judgment in the case of **State of Mysore and Others vs. H.D.Kolkar** (1974) 3 SCC 486, in which a Three Judges' Bench has held that once exercise of such disciplinary

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power results in the imposition of a punishment, the punishment becomes final, subject only to an appeal which has been authorized by the Rules. In that judgment, the Supreme Court had held that the rules did not even provide for the Government to have a power to call for the records, and to revise the orders passed, and to enhance the punishment imposed. The learned counsel had relied upon Para-10 of that judgment, in which the Supreme Court had held as follows:

"10. It is clear from the language of clause (c) of s.25 (2) that only rules and orders which could be made under that clause are rules and orders for the exercise of the power conferred by S. 25 (2) (a). The words "the exercise of any power conferred by this subsection shall be subject always to such rules and orders as may be made by the State Government" in S. 25 (2) (c) would indicate that the Government have no power to make any rule or order arrogating to themselves a power of revision over an order of punishment passed under s.25(2)(a). What is made subject to the rules or orders to be passed or made by Government is "the exercise of any power" conferred under clause 2(a) of s.25. Sub-section 2(c) of s.25 can only mean that the Government will have power to pass rules or orders for regulating the procedure or such other matters for the exercise of the power conferred by sub-section (2) (a) of s.25 by the officers mentioned therein. The power to enhance the punishment is a power which can be exercised only after the concerned officer has exercised his power under s.25(2) (a). In other words, rules or orders can be made by Government under s.25(a)(c) only for guiding him either in the matter of procedure, or the manner of arriving at a decision. It is obvious from the language of s.25(2)(c) that while the power exercisable under s.25 (2) (a) is subject to the rules and orders made by Government, the decision which comes into being after the exercise of that power is not subject to the supervision of the Government by framing a rule or making an order in that behalf. Once the exercise of such power results in the imposition of a punishment, the punishment becomes final subject only to an appeal which is authorised by s. 27. The consequence is that rule 17(2) of the Rules, by which the Government sought to acquire power to call for the records and to revise orders passed under s.25 (2) (a) and to enhance the punishment imposed, was clearly beyond its competence."

35. Learned counsel for the applicant also relied upon the judgment of the Supreme Court in **M.D. Maharashtra Cotton Growers Market Federation Ltd. Vs. Choughule Popatrao Annasaheb and Another** (2003) 6 SCC 247. In that case, the delinquent official had filed an appeal against the orders of the Enquiry Officer and the Disciplinary Authority. Thereafter, he had withdrawn that appeal. However, the Appellate Authority had continued the consideration of the appeal, and had enhanced the punishment. It was then held that once an appeal has been withdrawn, the Appellate Authority had no power to continue consideration of the same, and that no *suo moto* power existed under the relevant disciplinary rules to enhance the punishment.

36. In the particular case of Delhi Police, learned counsel for the applicant had relied upon the case of **Commissioner of Police vs. Anil Kumar Yadav** (supra), in which the Delhi High Court had held that the Rule 25B of the DPPA Rules, 1980, is *ultra vires*.

37. Learned counsel for the applicant had further relied upon the judgment of the Supreme Court in the case of **State Bank of India and Others vs. S.N.Goyal** (2008) 8 SCC 92. In that case, it was held that the position is different with reference to quasi judicial authorities. While some quasi judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. In that context, it was held that a quasi-judicial authority will become *functus officio* only when its order is pronounced, or published/notified, or communicated (put in the course of

transmission) to the party concerned. When an order is made in an office noting in a file, but is not pronounced, published or communicated, nothing prevents the Authority from correcting it, or altering it, for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become *functus officio*.

38. Learned counsel for the applicant submitted that in the instant case both the Disciplinary and the Appellate Authorities became *functus officio* after having passed the earlier punishment orders, and since there is no specific power of review provided in the DPPA Rules, 1980, they could not have later on changed their decision. Learned counsel for the applicant further relied upon the Supreme Court judgment in the case of **Kamal Nayan Mishra vs. State of M.P.** (2010) 2 SCC 169 to press his point that the Constitutional safeguards provided to a Government servant under Article 311 (2) could not have been taken away in the manner in which they had been taken away in the instant case.

39. Learned counsel for the applicant further relied upon the case of **Nagraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal and Another** (1991) 3 SCC 219, to submit that any order passed by the disciplinary authority on dictation was void. In that case, it was held by the Supreme Court that the Central Government's powers, or the Central Vigilance Commission's recommendation, can only be to issue directions regarding matters of policy, which are of uniform nature. Such powers do not include giving directions to the Banks regarding award of set punishments to delinquent officers for different misconduct, as the quantum of punishment would depend on the nature of each case, and the gravity of the misconduct, and when a Bank officer had been compulsory retired, by

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mechanically accepting Central Vigilance Commission's recommendations, without considering whether the punishment was commensurate with the gravity of the misconduct or not in the facts situation of the case, it was held that the order of compulsory retirement was vitiated by non application of mind, and hence the same was set aside. It was held that the Disciplinary Authority and the Appellate Authority are entitled to apply their mind in regard to the particular facts and circumstances of the case while deciding upon the punishment to be awarded.

40. Learned counsel for the applicant also relied upon the ratio of the case of **Dipak Babaria and Another vs. State of Gujarat and Others** (2014) 3 SCC 502, to emphasize his point that if the law requires that a particular thing should be done in a particular manner, it must be done in that way only, and none other, and in case of the Minister dictating the Collector to act in a particular manner, such dictation is a breach of the mandate of the statute framed by the Legislature, and it is a clear case of dereliction of the duties by the Collector. It was, therefore, submitted by him that the Disciplinary and the Appellate Authorities of the applicant before us could not have acted under dictation.

41. Finally, the learned counsel had relied upon the judgment of this Tribunal in OA No.546/2014 with 35 connected OAs in **Shri Rakesh Kumar Meena vs. Govt. of NCT of Delhi & Others**, decided on 21.05.2015, whereby, out of a bunch of cases, in the particular case bearing OA No.2456/2013 (Anand Kumar, Ex. Constable), the Tribunal had ordered thus:

"In the case of Anand Kumar, ex-Constable on a complaint made by the resident of village Goth, PS-Damini, District Muraina (MP) regarding adoption of deceitful means by the applicant for getting

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employment in Delhi Police, the facts were verified and when it was revealed that a case FIR No.100/92 under Sections 325/323/504/34 IPC, PS Damini was registered on 28.2.1992 and there was no disclosure about the said case in the relevant forms, a departmental inquiry was ordered against him. On completion of inquiry, the disciplinary authority, after considering all the facts and record available on file, inflicted upon him the penalty of reduction of pay by two stages for a period of two years with immediate effect and it was also ordered that he would not earn his increment of pay during the period of reduction and on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. Nevertheless, the appellate authority did not agree with the order of the disciplinary authority and after serving upon the applicant a show cause notice and taking his reply removed him from service vide order No.3352-407/P.Cell (Vig.) (P.II) dated 15.2.2000. However, the said order was withdrawn by Joint C.P./N.R., Delhi vide order No.3078-94/P.Cell (Vig.) P-I dated 9.3.2011.

2. Now after a long delay, the respondents could withdraw the order of punishment, i.e., reduction of pay by two stages for a period of two years inflicted in terms of the order dated 17.8.1999 (ibid) and have removed the applicant from service in terms of the impugned order dated 28.6.2013. Once for his particular act of omission or commission the applicant could be subjected to due process of law. Now after a long delay for the same act, the respondents could not have passed the impugned order. The removal is one of the penalties permitted to be imposed upon all the subordinate ranks i.e. from Constable to Inspector in Delhi Police. The penalty can be imposed after following the procedure laid down in Rule 16 of Delhi Police (Punishment & Appeal) Rules. Though in terms of 25B of the Rules, the Commissioner of Police, an Addl. Commissioner of Police; Dy. Commissioners of Police and Addl. Dy. Commissioners of Police; Principal, Police Training School or College; or any other officer of equivalent rank may at any time call for the records of awards made by any of his subordinate either on his own motion or otherwise and confirm, enhance, modify or annual the same or make further investigation or direct such to be made before passing orders, **nevertheless, no action under the sub rule can be initiated more than six months after the date of the order sought to be reviewed, except with the approval of Lt. Governor, Delhi. However, that power should be exercised within a reasonable period by the Lt. Governor, Delhi in terms of Rule 25C of the Rules.**

3. As far as the present case is concerned, it is not so that the penalty imposed upon the applicant on culmination of disciplinary action initiated against him has been confirmed or modified. What the respondents have done is that they have recalled the earlier penalty order and have passed the order of removal merely because the Lt. Governor has so observed in some other case. It is not open to the disciplinary authority or

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any other authority superior to it to penalize the employee or to otherwise make him to suffer adverse consequences for same lapse for which he could suffer the departmental action and consequential penalty long ago. Even otherwise also, the impugned order of removal passed by the respondents after recalling the earlier order of penalty is not supported by the rules, including the Delhi Police (Punishment & Appeal) Rules, 1980 and cannot be sustained. The same is accordingly quashed.

The respondents are directed to reinstate the applicant back in service with all consequential benefits.

OA stands disposed of."

(Emphasis supplied).

42. On the other hand, learned counsel for the respondents submitted that the powers of Hon'ble Lt. Governor, Delhi, under Rule 25C of the DPPA Rules, 1980, could not be subjected to any fetters, and when Rule 25C clearly provides that the Lt. Governor, may at any time, on his own motion, or otherwise, call for the records of any case decided by the Commissioner of Police, and confirm, modify or annul the order forced (sic passed) in it, there was no concept of reasonable time for the Hon'ble Lt. Governor, Delhi, to pass his orders, or any limitation on the power of the Lt. Governor, either to confirm, modify or annul the order passed in the file, and that his powers, could not be subjected to any limitation of time.

43. We have given our anxious consideration to the facts of the case. In so far as law laid down by the various case laws, as discussed above, the legal position is very clear that the Disciplinary Authority and the Appellate Authority of the applicant could not have acted of their own volition to revise their earlier orders of punishment already imposed upon the applicant, as they had become *functus officio* after having passed the earlier order of punishment in the case of the applicant.

44. However, this case is not as simple and straightforward as was the case of Anand Kumar, Ex. Constable (supra) in the OA No.2456/2013, which was decided by a Co-ordinate Bench along with 35 other connected OAs, through a common order dated 21.05.2015 (supra). There are certain peculiar circumstances in the facts of this case. Firstly, it is very clear that the applicant had failed to disclose his involvement in a criminal case, which was decided by the Additional Sessions Court Judge, Ambajogai, in which case he had been acquitted. In terms of the law as laid down by the Supreme Court in the cases of **Commissioner of Police, New Delhi & Another vs. Mehar Singh** with **Commissioner of Police, New Delhi & Another vs. Shani Kumar**, (2013) 7 SCC 685, the applicant was, therefore, not even entitled to be employed in the Government Service. Therefore, the original order at A-5 dated 28.02.1997, terminating the services of the applicant forthwith was fully in consonance with the Hon'ble Apex Court's judgment in the cases of **Mehar Singh and Shani Kumar** (supra).

45. The applicant had approached this Tribunal earlier through OA No.713/98, which OA came to be disposed of on 22.09.1998, directing the respondents to dispose of the representation of the applicant, by a reasoned and speaking order, within a period of one month from the date of receipt of a fresh copy of the representation, which was ordered to be furnished by the applicant to the Competent Authority, namely, the Commissioner of Police, Police Headquarters, within one week from the date of passing of that order. The applicant did not file his representation himself at all at that point of time, within the time allowed, and only his Counsel, who has argued this case before us, had on 09.05.1998 sent a letter to the then Commissioner of Police, which cannot be said to qualify as a representation of a subordinate

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Official to his superior Officer, within the confines of Administrative or service law as applicable to him, as was directed by the Bench on 22.04.1998. The Bench which had later considered his O.A. had even taken judicial notice of the fact that even the applicant himself has contended that although the order of termination of his service is apparently an order of termination simplicitor, it is actually based on some misconduct on the part of the applicant, and that being so, it was incumbent upon the respondents to hold some sort of a disciplinary inquiry, and in this context, a direction had also been issued to the respondents through this Tribunal's order dated 22.04.1998.

46. Therefore, it is clear that though, while disposing of the applicant's earlier O.A., the Co-ordinate Bench had vide its order dated 22.04.1998 allowed an opportunity to the applicant to make a detailed representation to the respondents within one week from that date, the applicant did not himself make such a representation within one week, though a letter had been sent to the then Commissioner of Police on 09.05.1998 by his Advocate, and the applicant made his representation, as he had been directed by this Tribunal on 22.04.1998, only after about two months, dated 17.06.1998, although the Annexure A-VII discloses the date of its actual submission only as 13.07.1998.

47. The Commissioner of Police had under his the then existing powers under Rule 25B considered not only the representation of the applicant submitted in the month of July 1998, but had also considered his Counsel's letter dated 09.05.1998, and a copy of the communication of the decision of the C.P. under Rule 25B had been issued thereafter on 20.07.1999 to the applicant's counsel also. It appears that the C.P. had considered under his

powers under Rule 25B both of those documents, the letter from the applicant's Advocate. Through that letter dated 20.07.1999, it was informed that the Commissioner of Police had ordered that the applicant may be reinstated in service as a temporary Constable, under intimation to the Headquarters, and it was also ordered that if the Disciplinary Authority so deems fit, the individual may be proceeded against departmentally, for the misdemeanour of the concealment of facts, and awarded such punishment as warranted.

48. Ostensibly, this power was exercised by the then Commissioner of Police under Rule 25B of the DPPA Rules, 1980, but, as the learned Counsel for the applicant has himself pointed out, in **Commissioner of Police vs. Anil Kumar Yadav** (supra), the Delhi High Court has since struck down the Rule 25B of the DPPA Rules, 1980, as *ultra vires*. However, it is seen from the judgment in the case of **Commissioner of Police vs. Anil Kumar Yadav** (supra) that the Rule 25B of the DPPA Rules, 1980, had actually been struck down as *ultra vires* first by a Full Bench of this Tribunal in OA No.342/2001, which decision was later upheld by the High Court.

49. Therefore, if the Disciplinary Authority and the Appellate Authority of the applicant could have, at that time, acted upon the directions issued by the Commissioner of Police under Rule 25B through the letter dated 20.07.1999 (Annexure A-VIII), and at that time, the actions thereafter taken by the Disciplinary Authority and the Appellate Authority, on the dictation of the Commissioner of Police, ostensibly and apparently under Rule 25B of the DPPA Rules, 1980, were within the four corners of the law (as that Rule 25B had been set aside by the Full Bench of this Tribunal only later, in OA No.342/2001), the applicant cannot now be allowed to plea that while his

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Disciplinary and Appellate Authorities could act in 1999 under the dictation of the then Commissioner of Police under an Order passed under Rule 25B, passed at the request of the applicant's Counsel first, and of the applicant later, they cannot now act under the dictation of the Hon'ble Lt. Governor of Delhi, in pursuance of an Order passed by the L.G. under Rule 25C.

50. Since the learned Counsel for the applicant had himself moved a letter to the then Commissioner of Police for invoking the Commissioner's powers under Rule 25B, and the applicant did not file an appeal against the orders dated 09.09.1999 of the Disciplinary Authority, who had at that time acted on dictation of the Commissioner of Police for implementing an order passed under Rule 25B, the applicant is now *estopped* from taking a converse plea. However, now when the power exercised by the Commissioner of Police under Rule 25B of the DPPA Rules, 1980, has been held to be *ultra vires*, and, the Hon'ble Lt. Governor, Delhi, had issued certain directions for modification of the order of punishment under the powers vested in him under Rule 25C, the applicant and his counsel cannot be allowed to plead that the orders now passed by the Disciplinary Authority and the Appellate Authority on dictation should be declared void and invalid, in view of the case laws in **Dipak Babaria and Another vs. State of Gujarat and Others** (supra) & **Nagraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal and Another** (supra), and they are *estopped* from taking a plea converse of their plea as taken in 1998.

51. Coming to the order passed by the Coordinate Bench dated 21.05.2015 in OA No.546/2014, with the 35 other connected OAs in **Shri Rakesh Kumar Meena vs. Govt. of NCTD & Ors.** and connected cases, the Order of the Coordinate Bench in OA No.2456/2013, concerned the Rule

25B of the DPPA Rules, 1980, and not the Rule 25C, which was not the case before that Bench. Since that Rule 25B has already been struck down by the Full Bench of this Tribunal, which order had been upheld by the Delhi High Court in the case of **Commissioner of Police vs. Anil Kumar Yadav** (supra), therefore, the ratio and observation arrived at by the Coordinate Bench in respect of OA No. 2654/2013, as reproduced above, is not binding upon us. It is more so because the present case before us specifically relates to Rule 25C, and the observations of the Coordinate Bench in respect of Rule 25C were only made in passing, perhaps as an *obiter dicta*, but were certainly not the ratio laid down in the order passed in O.A.No. 2456/2013.

52. It is clear from the Rule 25C that there are no fetters placed by the Legislature upon the powers of the Hon'ble Lt. Governor, Delhi, which powers of the L.G. also flow from Section 4 of the Delhi Police Act, 1978. Therefore, the Hon'ble Lt. Governor of Delhi can, at any stage, call for the records of any case decided by the Commissioner of Police, either on his own motion, or otherwise, and confirm, modify, or annul that order. Therefore, we find that the Hon'ble Lt. Governor, Delhi, was fully within his powers under Section 4 of the Delhi Police Act, 1978, read with Rule 25C of the DPPA Rules, 1980, to come to the conclusion that he could modify the direction earlier issued by the then Commissioner of Police under Rule 25B through Annexure A-VIII letter dated 20.07.1998, which he did.

53. Obviously, thereafter, the final order for imposition of punishment could not have been passed by the Hon'ble Lt. Governor, Delhi, himself, and, in order to implement the Lt. Governor's Orders, the consequential orders shall have to be passed only by the Disciplinary Authority of the concerned official, as had happened in 1999 also, and the appeal shall then lie to the

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Appellate Authority of the concerned official, as had happened in 1999 also, even though the Appellate Authority cannot also go against the Orders passed by the Lt. Governor under Rule 25C, as it could not, in 1999, go against the Orders passed by the then Commissioner of Police under Rule 25B. Therefore, when the Hon'ble Lt. Governor may modify or annul any orders passed by the Commissioner of Police, in exercising his powers under Section 4 of the Delhi Police Act, 1978, read with Rule 25C of the DPPA Rules, 1980, the follow-up orders of the Disciplinary and the Appellate Authorities cannot at all be assailed as having been passed on dictation, and, therefore, they cannot be held as void and invalid, as has been prayed in the present O.A. When the Legislature has specifically conferred a power upon the Hon'ble Lt. Governor of Delhi, without placing any fetters upon his exercise of such powers in the nature of any time limit or limitation upon his exercise of those powers, this Tribunal cannot read such a time limit or limitation upon his exercise of such powers, which was not the intention of the Legislature, as reflected from either the Section 4 of the Act, or the Rule 25C concerned.

54. Rule 25B of the DPPA Rules, 1980 was struck down as *ultra vires* the provisions of the Delhi Police Act, 1978. However such fate can never before the Rule 25C of the DPPA Rules, 1980, because Section 4 of the Delhi Police Act 1978 itself provides as follows:

"4. Superintendence of police force to vest in the Administrator – The superintendence of the Delhi Police throughout Delhi shall vest in, and be exercisable by the Administrator and any control, direction or supervisory exercisable by any officer over any member of the police force shall be exercisable subject to such superintendence.

[The Constitution (Sixty-ninth Amendment Act, 1992 has added two new Articles 239-AA and 239A-B to the

Constitution. Under these Articles the Union Territory of Delhi has been given a special status. Article 239-AA provides that the Union Territory of Delhi shall now be called "the National Capital Territory of Delhi" and the Administrator appointed under Article 239 shall be designated as the Lieutenant Governor.]

(Emphasis supplied)

55. Therefore, when all the powers of Delhi Police throughout Delhi shall vest in, and be exercisable by the Administrator, and any control, direction or supervisory control exercisable by any officer over any member of the Delhi Police can only be exercisable, subject to Superintendence of the Hon'ble Lt. Governor of Delhi, which are his powers exercisable as the Administrator, now designated as the Hon'ble Lt. Governor, Delhi, under Article 239 of the NCT Act, Delhi, the orders of the Lt. Governor, Delhi passed in exercise of his statutory powers of superintendence over the police force in Delhi, under Section 4 of Delhi Police Act, 1978, have in fact only been reiterated in Rule 25C of the DPPA Rules, 1980. Even though, *prima facie* the Rule 25C of the DPPA Rules, 1980, is only a rewording of the statutory powers of the Administrator under Section 4 of the Delhi Police Act, 1978, such rewording and prescription again through the Rule 25C was perhaps necessitated to prove the point of his superintendence as the Administrator, now Lt. Governor, Delhi over the Commissioner of Police, Delhi, also.

56. Therefore, when under his powers under Section 4 of the Delhi Police Act, 1978, the Superintendence of Delhi Police vests in and is exercisable by the Administrator, now the Lt. Governor, all the powers of the Disciplinary Authority and the Appellate Authority of the applicant are subject to the superintendence of the Administrator, now the Lt. Governor. N.C.T.D., under Section 4 of the Delhi Police Act, 1978, read with Rule 25C of the DPPA

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Rules, 1980, and the applicant cannot be allowed to plead that the Hon'ble Lt. Governor, Delhi could not have acted in exercise of his powers of superintendence, and issued the direction of the type of which he had issued, reversing the orders issued on the directions issued by the Commissioner of Police under Rule 25B through Annexure A-VIII dated 20.07.1999. The applicant cannot be allowed to plead that the Disciplinary Authority was duty bound in 1999 to obey the Orders of the then Commissioner of Police issued under the Rule 25B, but was not duty bound to follow the orders passed by the Lt. Governor in his general powers of superintendence under Section 4 of the Delhi Police Act, 1978 read with Rule 25C of the DPPA Rules, 1980.

57. Therefore, we find that there is no merit in the present O.A. As a result, the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/