

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2594 OF 2014

New Delhi, this the 7th day of March, 2017

CORAM:

**HON'BLE SHIR SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMMBER

í í í í í ..

Sh.Chaman Prakash, aged 44 years (**Since dead**)

(S/o Sh.Bhagwan Singh,

R/o Village Changoli,

P.O.& P.S.Kakore,

District Gautam Budh Nagar, U.P)

and after him, his LRs

1. Smt. Sushila Devi, aged 42,
Widow of late Sh.Chaman Prakash,
R/o villageChangoli,
P.O.& PS-Kakore,
District Gautam Budh Nagar,
U.P. Pin 203203
2. Smt. Kanti Devi, aged 66 years,
W/o Sh.Bhagwan Singh,
R/o Village Changoli,
P.O.& P.S.Kakore,
District Gautam Budh Nagar, U.P.
3. Sachin Tomar, 21 years,
S/o late Sh.Chaman Prakash,
R/o Village Changoli,
P.O & P.S.Kakore,
District Gautam Budh Nagar, U.P.
4. Sunny Tomar, aged 11 years
S/o late Sh.Chaman Prakash,
R/o Village Changoli,
P.O. & P.S. Kakore,
District Gautam Budh Nagar,
U.P. (through applicant no.1)

5. Sheetal Tomar, aged 17 years,
D/o late Sh.Chaman Prakash,
R/o Village Changoli,
P.O.& P.S.Kakore,
District Gautam Budh Nagar,
U.P. (through applicant No.1) í í .. Applicants

(By Advocate: Shri Ajesh Luthra)

Vs.

1. Commissioner of Police,
PHQ, MSO Building,
I.P.Estate, New Delhi
2. Joint Commissioner of Police (Northern Region),
PHQ, MSO Building,
I.P.Estate, New Delhi.
3. Deputy Commissioner of Police (North West District),
Ashok Vihar,
Delhi 110054 í í . Respondents

(By Advocate: Ms.Rashmi Chopra)

ORDER

Per Raj Vir Sharma, Member(J):

Shri Chaman Prakash (since dead) (hereinafter referred to as the original applicant) was a Head Constable in Delhi Police. In a regular departmental enquiry, the Enquiry Officer (EO) submitted his findings on 5.5.2013 (Annexure A/1) holding the charge as proved against him. The Deputy Commissioner of Police, North West Distt., Delhi, by his order dated 28.6.2013 (Annexure A/2), imposed on him the punishment of dismissal from service. The Joint Commissioner of Police, Northern Range, Delhi, by

his order dated 2.6.2014 (Annexure A/3), upheld the said punishment order and rejected the original applicant's appeal. Hence, this OA was filed by the original applicant on 30.7.2014 seeking the following reliefs:

- õ(a) Quash and set aside the impugned actions/orders placed at Annexure A/1, Annexure A/2 and Annexure A/3;
- (b) direct the respondents to reinstate the applicant in service, forthwith, with all consequential benefits including full back wages and seniority etc.
- (c) award costs of the proceedings and
- (d) pass any order/direction which this Honøble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.ö

2. Resisting the O.A., the respondents have filed a counter reply.

3. During the pendency of the O.A. before this Tribunal, the original applicant died, and his legal heirs were substituted in his place.

4. We have carefully perused the records of the OA and have heard Shri Ajesh Luthra, the learned counsel appearing for the applicant, and Ms. Rashmi Chopra, the learned counsel appearing for the respondents. We have also perused the DE file produced by Ms. Rashmi Chopra.

5. Many points had been urged in the Original Application in support of the challenge thrown to the findings of the EO and the orders passed by the Disciplinary Authority (DA) and Appellate Authority (AA), but, at the time of hearing, the same were restricted to non-consideration of

the applicant's pleas raised in his written statement of defence by the EO, DA and AA. Shri Ajesh Luthra, the learned counsel appearing for the original applicant/applicants, took us through the summary of allegations, written statement of defence, enquiry report, the orders passed by the DA and AA, and submitted that the EO and DA have not considered the statements made by DWs and the order of the Judge, MACT, Rohini Courts, Delhi. The AA has failed to apply its mind to the issues. While admitting that inquiry report of the Registrar (Vigilance) was submitted by the applicant along with defence statement, the AA has wrongly held that the same did not form part of the DE. It was submitted by Shri Ajesh Luthra that the DA and AA discarded the enquiry report submitted by the Registrar (Vigilance), Hon'ble High Court of Delhi, and statements made by DWs, without assigning any reason. It was also submitted by Shri Ajesh Luthra that the EO, DA and AA have proceeded with a predetermined mind to hold the applicant guilty of the charge and to punish him, and the impugned enquiry report and the orders have been passed by them mechanically. Therefore, the findings of the EO and the orders passed by the DA and AA are bad and illegal and hence unsustainable in the eyes of law.

6. Ms. Rashmi Chopra, the learned counsel appearing for the respondents, on the other hand, contended that the enquiry was held in consonance with the principles of natural justice. The scope of judicial review in disciplinary proceedings is extremely narrow and limited. The

court/tribunal cannot re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusion arrived at by the EO or the DA on that evidence. The tribunal/court cannot sit in appeal over those findings and assume the role of the AA.

7. It is no doubt true that the court/tribunal would not interfere with the findings recorded at the departmental enquiry by the EO or the DA as a matter of course. The court/tribunal cannot sit in appeal over those findings and assume the role of the AA. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the court/tribunal under the Constitution of India takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

8. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by the Honøble Supreme Court in **State of Andhra Pradesh vs. Sree Rama Rao**, AIR 1963 SC

1723. This decision was followed in **Central Bank of India vs. Prakash Chand Jain**, AIR 1969 SC 983 and **Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors**, AIR 1976 SC 98.

9. In **Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and Others**, AIR 1984 SC 1805, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

10. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon^{ble} Apex Court has held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.ö

11. In **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil**, (2000) 1 SCC 416, the Honøble Supreme Court has held as under:

ö...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the

case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the aboveí ö

12. In **Syed Rahimuddin v. Director General, CSIR and others**,

(2001) 9 SCC 575, the Honøble Apex Court has observed as under:

õí It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable maní .ö

13. In the light of the above principles, let us scrutinize the case in hand.

14. The summary of allegations against the original applicant is as under:

õIt is alleged against HC Chaman Parkash No. 69/NW, posted as Naib Court in MACT, Room No.19, Rohini Court that, on 27.09.11 at about 2.30 p.m., SHO Sh.Vijay Vats and SI Rakesh Duhan of PS Keshav Puram came to attend the Honøble Court of Sh.Chander Bose, Judge MACT in case FIR No.271/09 PS Keshav Puram (Pappu Vs. SHO Keshav Puram). The Ld. Judge was insisting on arresting of the driver of car No.DL-2-CQ-3070, but no evidence was on case file against driver of above said car. During the submission made by Inspr. Vijay Kumar on the aspect the Honøble court inferred that the SHO is interfering in the court proceedings and asked the HC to take the SHO in custody. The HC took the SHO in custody without any a/warrant of arrest. Meanwhile some advocates reached in the court room and started abusing and thrashing the SHO due to which the SHO sustained injuries and fell down in the court room but the HC did not intervene to save the SHO and to maintain law and order in the court room displaying high degree of cowardice. He even not called any assistance for any law enforcing agency and then did not report the matter to the Sr.Officers as was required from time to time to report any matter relating to incident involving law and order in the court room.

Above act on the part of the HC amounts to display high level of cowardice act, gross misconduct, dereliction in discharge of his official duty and unbecoming of a police officer making him liable for punishment under Delhi Police Act.

15. In order to prove the charge, the Department examined nine witnesses, out of whom, SI Rakesh Duhan, P.S.Keshav Puram, Delhi (PW 1), SI Rajender Singh, P.S.Bharat Nagar, Delhi (PW 2), Sh.Raj Sharma (PW 3), Sh. Devender Goyal (PW 4), and Sh.Pritam Chand (PW 8) claimed to be present in the court of Shri Chandra Bose, Presiding Officer, MACT, Room No.19, Rohini Court, Delhi on 27.9.2011, when the alleged incident took place. The alleged victim Inspector Vijay Kumar, SHO, P.S Keshava Puram, Delhi, was examined as P.W.9. P.Ws.5, 6 and 7 were examined to prove certain documents during the departmental enquiry.

16. The applicant denied the charge and got examined three witnesses in support of his defence. DW 1-Shri Sushil Kumar was the Reader, and DW 2-Shri Harish Kumar was the Stenographer working in the court of Shri Chandra Bose, Judge, MACT, Rohini Courts, Delhi, on 27.9.2011. DW 3-Shri Ombir Singh, Advocate, was a Member, Bar Association, Rohini Courts, Delhi, who claimed to be present in the court of Shri Chandra Bose, Judge, MACT, Rohini Courts, Delhi, on 27.9.2011, in connection with a case titled as 'Jagbir Vs. Shri Ram General Insurance'. All the D.Ws. stated, inter alia, that the alleged incident did not take place inside the court room.

17. Along with his written statement of defence, the applicant filed copies of the proceedings dated 27.9.2011 in Case FIR No.271/09, the inquiry report submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi, the statements made by Shri Harish Kumar, Stenographer, and Sh.Sushil Kumar, Reader, during the enquiry conducted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi.

18. In his written statement of defence, while denying the charge, the applicant took, inter alia, the following pleas:

- (i) öThe version of all the above witnesses are proved wrong, false, motivated at the instance of Inspector Vijay Vats because the incident was given a colour of judiciary Vs. Police by Inspector Vijay Vats to all Senior Officers. Therefore, at the dictation of senior officers, the police officials mentioned above and the public persons were created as witnesses at the instance of PW-9 and their deposition is totally false and motivated and it cannot be relied.ö
- (ii) öí Inspector Vijay Vats has not got recorded any report in the daily diary on 27.09.2011 about the alleged beating in the court room by the advocates though he got treatment vide MLC No.3161 in Saroj Hospital & Heart Institute and discharged at 8.15 PM on 27.09.2011. í .The above documentary evidence clearly established that a false story has been created by Inspector Vijay Vats against the applicant and the Honøble Court to conceal his misdemeanor and misbehavior with the Honøble Judge and further interfering in the judicial proceedings of the Courtí ..ö
- (iii) öí ..The court proceedings dated 27.09.2011 is self explanatory. It is proved that the court did not order of taking into custody Inspector Vijay Vats, PW-9 as alleged by the PWs and applicant did not take Inspector Vijay Vats into custody. í ..ö

- (iv) ōí ..Shri A.S.Yadav, Registrar (Vigilance) concluded in his report that Inspector Vijay Vats SHO was adamant and insisted upon the Ld.P.O. to accept the closure report. Ld. P.O. warned the SHO that if he continued to interrupt the court proceedings, he would take action against him according to law and asked him to occupy the chair but instead of occupying the chair, the SHO left the court while muttering something. The Ld. P.O. was upset with the attitude of the SHO so he retired to his chamber for some time and after some time resumed the proceedings. However, nobody appeared in that matter and the matter was adjourned for further proceedings at about 4.30 PM. It is further concluded that it is evident that incident of assault had not taken place inside the court premises as alleged in the FIR as well as by the Joint Commissioner in his letter dated 29.09.2011.ö
- (v) ōí the appellant had produced DW-1 Sushil Kumar the then Reader and DW-2 Shri Harish Kumar, Steno on 27.9.2011 in the court of Shri Chandra Bose, Judge MACT, Rohini Courts, Delhi who are the eye witnesses of all the incident. It is pertinent to mention here that they have also deposed before Shri A.S.Yadav, Registrar (Vigilance), Delhi High Court in the judicial enquiry in the matter. It has been proved from the deposition that Inspector Vijay Vats was not ordered to be taken into custody by the Honøble Judge and Inspector Vijay Vats was not taken into custody by the applicant as alleged in the charge.ö
- (vi) ōí ..the allegation that the applicant did not intervene to save the SHO and to maintain law and order in the court room and displayed high degree of cowardice is proved wrong and unfounded from the above evidence. It is clear that the SHO was accompanied by SI Rakesh Duhan PW 1 and his wireless operator outside the court room and they owed a duty to prevent the assault on the SHO by the Advocates outside the court room. It was the duty of the SI Rakesh Duhan PW-1 to inform the law enforcing agency for help and also Senior Officers. Therefore, this part of the allegations that the applicant did not call any assistance from any law Enforcing Agency and then did not report the matter to the Senior Officer is also proved wrong and irrational. However, it is humbly submitted that the applicant had informed to Ct. Sandeep on duty in MACT Cell, North West on 27.09.2011 about the incident in question for

further informing the Inspector MACT Cell about the incidentí ..ö

- (vii) öí ..the case of Pappu Vs. SHO Keshav Puram (MACT Claim Case) was not represented by any Advocate from the side of Pappu which is clear from the ordersheet of the court dated 27.09.2011. Ordersheet is already annexed. The question arises when Pappu was not represented by any Advocate of Rohini Court then why the Advocate had a fight and assaulted Inspector Vijay Vats (PW-9) outside the court room. PW-9 failed to assign any motive of assault on him by Advocate Inderjeet Siroha, Advocate Rajiv Tehlan, etc. í ..ö

19. Now we have to look into the proceedings dated 27.9.2011 recorded by the Judge, MACT, Rohini Courts, Delhi, the enquiry report submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi, the findings of the EO, and the orders passed by the DA and AA, and for ready reference, they are being quoted below.

20. The proceedings dated 27.9.2011 recorded by the Judge, MACT, Rohini Courts, Delhi, in case FIR No.271/09 read thus:

öFIR No.271/09
PS Keshav Puram
MISC. No.27-D
Pappu VS SHO PS Keshav Puram
27.09.11

Present: IO SI Rakesh Duhan and filed fresh AIR along with relevant documents. He also produced driver of offending vehicle.

During proceedings of the case, I started making inquiries from IO of the case about the owner of offending vehicle and about the fact whether offending vehicle was insured or not at the time of accident. It is stated by IO that offending vehicle belongs to High Dignitary, i.e., Lieutenant Governor of Andaman and Nicobar Island and is not connected in this case. Perusal of Log Book of offending vehicle filed on record however shows that offending vehicle was being used on

various dates for other purposes by some other persons. I am of the view that matter should be proceeded further according to law. One police official of the rank of Inspector, who is present with the IO has started interfering in the proceedings of the case and stated that he is the SHO of PS Keshav Puram as well as IO of the case. He has further stated that offending vehicle is not linked in this case and court cannot make any inquiries like this. When I told him that he is not the IO of the case and IO of the case is present before the court and IO would give answer to my queries, he started shouting at the court stating that what this court thinks of itself and he would make complaint to High Court and would see me. I have requested him not to interfere in the court proceedings and to sit on the chairs behind, he again started shouting without caring my request and gravely misbehaved and insists upon passing an order of closure. Then I have warned to the SHO that I would be compelled to initiate proceedings against him in case he obstructs or insists upon dictating to this court what order has to be passed. On this, he became furious and again started misbehaving and has used contemptuous language like he would see me and would drag me before the High Court on which I have now finally warned him of adverse legal consequences if he further obstructs or interferes in the court proceedings and advised that he should sit in the court on the chair.

At this stage, the SHO has started walking out the court and while going out, he has muttered something which I could not properly hear but was appearing to be abusive. Feeling shocked and uncomfortable with the contemptuous behavior of SHO PS Keshav Puram, I am retiring to my chamber for some time.

Now, after some time, I have come to resume my judicial work and asked Naib Court HC Chaman Prakash where IO and SHO were, then he informed me that they had gone and so, I performed my other judicial work.

Again, at 4.35 pm, I asked my Naib Court as to where parties are, then he informed me that case was called but no one is present.

Now, case is adjourned for further proceedings for 12.10.11.ö

20.1 The enquiry report dated 24.10.2011 submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi, reads thus:

INQUIRY REPORT

Vide letters dated 27.9.2011, Sh. S.K.Sarvaria, Ld. District Judge and Additional Session Judge, I/c Rohini Court Complex has submitted that he was informed on 27.9.2011 by Sh.Chandra Bose, P.O., MACT, that in a matter before him pertaining to an offending vehicle in use by a high dignitary, one Investigating Officer along with SHO, P.S. Keshav Puram appeared in his Court and insisted upon him to pass an order as per his will and started interrupting the proceedings of the Court. When the Presiding Officer started recording the proceedings about the interruption and interference made by the SHO, he went outside uttering unpleasant words. Thereafter, the said SHO had a scuffle with the advocate outside the court room.

On the complaint of SHO, Keshav Puram, FIR No. 440/2011 dated 27.9.2011 was registered at P.S.Prashant Vihar under Section 186/353/333/34 regarding the beatings given to SHO, R.K.Puram.

Joint Commissioner of Police vide his letter dated 29.9.2011 stated that local inquiries from the police personnel as well as member of the public revealed that learned P.O. insisted upon arresting the driver of the car despite the sole eye-witnesses having refused to identify the aforesaid car. When SHO, Keshav Puram tried to explain to the Ld. P.O. about the non-involvement of the car in the accident Ld. P.O. got infuriated and started rebuking and humiliating the SHO by using derogatory remarks **“Is Gadhe Ke Bachhe Ko Peeche Karoö.** When the SHO pleaded the Ld.P.O. not to use the derogatory language, the P.O. got further infuriated and said, **“Tu Mujhe Language Sikhayega, Mein Bataunga Tujhe, SHO”**and asked Naib Court HC Chaman Parkash to take Inspector/SHO Vijay Kumar in custody. The P.O. also gave certain directions to his orderly who immediately went outside the court. Within no time, 30/40 advocates including advocate Mr.Inderjeet Saroha and Mr.Rajeev Tehlan stormed inside the court room and cordoned the SHO and in the presence of P.O., the said Sh. Inderjeet Saroha hit the SHO on his nose and advocate Rajeev Tehlan hit him on his face and other advocates also joined them in hitting him with kicks and fists. While hitting the SHO, the advocates were stated to be shouting, **“Is**

Court Me Vahi Hoga Jo Hum Chahenga, Maro Salo Ko”. It has also been alleged by the Joint Commissioner of Police that the P.O. Sh.Chandra Bose did not stop the advocates from beating the SHO and even did not allow the brutally beaten Inspector to take medical aid at the first instance and it was only after SI Rakesh Duhan persuaded the P.O., the Inspector was permitted to be taken to hospital for treatment.ö

The Administrative and General Supervision Committee of the Honøble High Court in its meeting held on 19.10.2011 directed the undersigned to go and make spot inquiries from the staff and to submit the report.

On 22.10.2011, I went to Rohini Court Complex and recorded the statement of Sh.Harish Kumar (EW-1) Stenographer and Sh. Sushil Kumar (EW-2), Reader attached to the court of Sh.Chandra Bose, Ld. MACT, Delhi.

From the statement of Sh.Harish Kumar, Stenographer, it is evident that in case FIR No.271/09 I.O.SI Rakesh Duhan, was to submit Accident Information Report (AIR). SI Rakesh Duhan along with the driver of the offending vehicle appeared before the Ld. P.O. and submitted that the offending vehicle pertains to Lt. Governor of Andaman and Nicobar Island and was not involved in the accident. He requested the learned P.O. to accept the closure report. Learned P.O. after going (through) the log book of the offending vehicle directed the I.O. Rakesh Duhan to further investigate the matter. At that stage, SHO, Keshav Puram, who accompanied SI Rakesh Duhan informed the learned P.O. that the offending vehicle is not involved in the accident and asked him to accept the closure report. Ld. P.O. told the SHO that he was making inquiry from SI Rakesh Duhan who is the I.O. of the case and asked him to sit quietly on the chair lying in the court but SHO was adamant and insisted upon the Ld. P.O. to accept the closure report. Learned P.O. warned the SHO that if he continues to interrupt the court proceedings he would take action against him according to law and asked him to occupy the chair but instead of occupying the chair the SHO left the court while muttering something. Ld. P.O. was upset with the attitude of the SHO so he retired to his chamber for some time and after some time resumed the proceedings. However, nobody appeared in that matter and the matter was adjourned for further proceedings at about 4.30 P.M.

Likewise, Sh.Sushil Kumar, Reader supported the version by the Stenographer. I also wanted to record the statement of H.C.Chaman Parkash who was posted as Naib

Court in that court as allegations were made against him in the FIR. However, Mr. Harish Kumar, Stenographer informed me that HC Chaman Parkash has been suspended by his department.

From the statement of Sh. Harish Kumar, Stenographer and Sh. Sushil Kumar, Reader, it is evident that incident of assault had not taken place inside the court premises as alleged in the FIR as well as by the Joint Commissioner in his letter dated 29.9.2011.

20.2 Findings of the EO read thus:

FINDINGS

This is the finding of departmental enquiry of HC Chaman Prakash No. 69/NW PIS NO.28901451 under the provision of Delhi Police (Punishment and Appeal) Rules-1980. The order of departmental enquiry was issued vide order No.10208-30/HAP/NWD (P-I), Dt.1/12/2011 and the same was entrusted to Inspector Mukesh Kumar. The DE of HC Chaman Prakash was entrusted to me for further enquiry vide order No. 5175-76/HAP(P-II)/NWD, Dt.18/06/2012. The summary of allegation, list of witness and list of documents were supplied to the delinquent HC Chaman Prakash 69/NWD and he was explained the SOA. It is alleged against HC Chaman Parkash 69/NW (PIS 28901451) while posted as Naib Court in MACT, Room NO.19, Rohini Courts, Delhi, that on dt.27/09/2011 at about 2.30 PM, Inspector Vijay Vats (SHO PS Keshav Puram) and SI Rakesh Duhan of PS Keshav Puram came to attend the Honøble court of Sh. Chander Bose, Judge, MACT in cae FIR No.271/09 PS Keshav Puram (Pappu Vs. SHO Keshav Puram). The Ld. Judge was insisting on arresting of the driver of Car No. DL-2CQ-3070, but no evidence was on case file against driver of above said car. During the submission made by Insp. Vijay Kumar on this aspect the honøble Court inferred that SHO is interfering in the Court proceeding and asked the HC to take the SHO in custody. The HC took the SHO in custody without any warrant of arrest. Meanwhile some advocates reached in the Court Room and started abusing and thrashing the SHO due to which the SHO sustained injuries and fell down in the court Room but the HC did not intervene to save the SHO and to maintain law and order in the Court Room displaying high degree of cowardice. He even not called any assistance from any law enforcing agency and also did not report the matter to

the senior officers. The delinquent did not plead guilty and preferred to contest. The delinquent was allowed to engage the defence assistant and the PWs were called. The statement of PW1 SI Rakesh Duhan was recorded and examined by Insp. Mukesh Kr., the previous EO. I recorded the statements of PWs from PW2 to PW9 and three defence witnesses. The gist of deposition of the PWs examined during the DE are as follows:-

PW 1, SI Rakesh Duhan, D-3296, PIS No.28010567, PS Keshav Puram Delhi.

Stated that, he had given his report and statement dt.28/9/11 and 1/10/11, he said that his report that on 27/9/11 while during the hearing in Case FIR No.271/09 U/s 279/338 IPC, PS Keshav Puram in the Honøble court of Sh.Chandra Bose PO MACT Room No.19, Rohini Court, Delhi. The Honøble PO MACT became annoyed during the hearing and ordered HC Chaman Parkash the Naib Court to take Insp. Vijay in his custody who in compliance took Inspector Vijay Kumar, SHO Keshav Puram in his custody like an accused person. In the meantime 30-40 advocates thronged inside the court room and assaulted the SHO Keshav Puram Inspector Vijay Kumar by which he got injuries. The HC Chaman Parkash was present there as a mute spectator and he did not save the SHO from beatings by advocates. HC Chaman Parkash did not provide medical help to the SHO or call PCR or Ambulance. When he tried for medical help to SHO after procuring permission of the Honøble Court, HC interfered in between, thus the behavior of the HC Chaman Prakash had been cowardice. On 1/10/11 in his statements in detail he stated that on 29/8/11 the case FIR 271/09 U/s 279/338 IPC PS Keshav Puram he had appeared before the Honøble court and honøble court ordered to file fresh AIR and the SHO to appear on next date i.e. 27/9/11. The Honøble court had enjoined verbally to arrest the driver of offending vehicle and file fresh AIR but there was no evidence against the driver of offending vehicle. The facts were told by the SHO also. While the SHO was telling the facts regarding the case, the honøble court became infuriated and asked about the SHO that who was he? SHO Ins. Vijay Kumar told the Honøble Court about his identity that he was SHO Keshav Puram. On the reply by SHO the Honøble Court said that who had called you **Iss Gadhey Ke Bachche Ko peechhey Karoö**. The SHO requested the honøble court not to use the insulting words. On that the honøble

court ordered the Naib court HC Chaman Prakash to take the Inspector Vijay Kumar in custody. The Court peon was directed by the honøble court to call the advocates and said to SHO in loud voice **“Mein Banungo Tujhe SHO”**, at the same time 30-40 advocates led by advocates Saroha and Rajeew Tehlan torn off the police dress of SHO and started bearing the SHO, he called PCR who took the SHO to Hospital. He told that the incident took place inside the court room. The statement of SI Rakesh Duhan Dt.18/1.12 was recorded as PW 1 and the report on 28/9/11 was marked as PW1/A and statement dt.1/10/11 was marked as PW1/B.

PW2-SI Rajender Singh No. D-2444, PS Bharat Nagar, Delhi:

The PW-2 stated that on 27/9/11 he was present in the honøble court regarding FIR No.236/11 U/s 279/338 IPC PS Rani Bagh. On that day SI Rakesh Duhan and SHO Keshav Puram Insp. Vijay Kumar appeared before the honøble court. Suddenly the Honøble court became angry while discussing the matter regarding the case. The Honøble court said to the SHO that why he was present in the curt room and said **Gadhey Ke Bachche Peechey Baith Jao**. The SHO told the court that it was the verbal order of the honøble court. On the reply of SHO, the honøble court repeated the same insulting words. In the meantime one unknown advocate said to the SHO that why you are arguing with the judge saying this the said advocate walked out of the court and called about 30-40 advocates in the court, out of them he identified one advocate Saroha who began abusing and beatig the SHO and he closed the gate of the court so that no advocate could enter the court room. The PW2 could not retrieve about the presence of HC Chaman Prakash during the assault over the SHO. His statement Dt.20/9/11 was exhibited as PW-2/A.

PW3-Sh.Raj Sharma:

The PW-3 stated that he could not recollect the date of incident but it was the court of Judge Chandra Bose and there was some arguments between the judge and SHO Vijay Kumar. The Honøble court had called the SHO as **“Gadhey Ka Bachcha”** on which SHO objected. There were two advocates present in the court room who walked outside during the arguments and came inside the court with the crowd of

advocates. After that the PCR staff came and they took the SHO from court. The previous statement dt.4/10/11 was exhibited as PW-3/A in that statement he had said that the honøble court had said the SHO Vijay Kumar two time that õGadhey Ke Bachche Bahar Jaö.

PW4-Sh.Devender Goyal:

He stated that on 27/9/11 he had gone in the court of Sh.Chandra Bose, Room No.19 Rohini Courts regarding hit & run case in which he was witness. The offending vehicle was the vehicle of Andaman & Nikobar house. The hearing of the case started and honøble court said to arrest the driver but the SHO said that there was no evidence against the driver but honøble court insisted to arrest the driver, the SHO said that you please make written order to arrest the driver. On this Honøble judge became angry and used insulting words and ordered Naib Court to arrest the SHO. On the verbal order of court the Naib Court caught the hand of SHO, in the meantime the honøble judge whispered to the court boy who walked outside the court room and after two minutes 40-50 advocates thronged inside the court room and began the SHO thrashing. There was nobody other than SI Rakesh, the driver and I to save the SHO. The SHO fallen down and I opened his shoes to relax his body. While we were preparing to take the SHO to hospital the Naib Court told that warrant of SHO are being prepared so he cannot be taken to hospital. The SI Rakesh called PCR who took the SHO to the hospital. The statement of PW-4 written on 1/10/11 was shown to him which was marked as exhibit No.PW-4/A.

PW 5: Const. Brahma No.2775/Outer Distt. P.S.Prashant Vihar:

The PW-5 brought Rojnamcha dt.27/9/2011, DD No.20, Rohini Court and the DD entry was exhibited as PW-5/A. He was shown the FIR No.440/11, Dt.27/9/11, u/s 186/353, 333/34 IPC which was exhibited as PW5/B.

PW6-HC Harender Kr.No.305/NW PIS No.28901710, MACT Cell, North-West District.

PW 6-stated that HC Chaman Prakash used to give details of the cases by telephone and sometime he comes to MACT Cell.

PW7-HC Vijay No. 376/NW, PIS No.28940191 PS Keshav Puram:

The PW7 stated that he had seen the photocopy of FIR No.271/09 u/s 279/337 IPC, P.S.Keshav Puram which was exhibited as PW7/A. He seen the DD No.11A, 13A and 23A dt.27/9/11 exhibited as PW7/B,PW7/C and PW8/D respectively. He produced the true copies of DD No.23A, Dt.1/10/11, exhibited as PW7/E and DD No.15A, dt.28/9/11, exhibited as PW7/F.

PW8: Sh.Pritam Chand:

The PW-8 stated that before one or one and half year he appeared before the Judge Sh.Chandra Bose after receiving notice from P.S.Keshav Puram. The honøble court asked the SHO whether he arrested the driver of the offending vehicle, the SHO replied that there was no evidence against the driver so he was not arrested. On this reply by SHO the court became angry and said that why did you not obey my order and said “**Gadhey ke Bachche**”. The Honøble judge started abusing the SHO, when SHO requested not to use the abusive words then Honøble judge became furious and ordered the Naik court to arrest the SHO. The Naib Court caught hold the hand of SHO. The SHO asked whether any order of his arrest was there? In the meantime some advocates came and started beating the SHO. They torn off the police dress of SHO and he got injuries. SI Rakesh Duhan called 100 number and the PCR took the SHO to hospital.

PW 9-Inspr. Vijay Kr. (SHO-Keshav Puram) presently posted at EOW, Crime Branch, Delhi:

The PW 9 stated that on 27/9/11 he appeared before the honøble court of Sh.Chandra Bose, Room No.19 Rohini Court in connection with case FIR No. 271/09, u/s 279/337 IPC PS Keshav Puram. On 29/8/11 the honøble court had verbally ordered to the I.O. of the case SI Rakesh Kumar to appear with the SHO Keshav Puram and to file the fresh AIR against the driver on next date i.e. 27.09.11. At about 2.30 PM SI Rakesh filed the fresh AIR before the honøble court and he told that there was no evidence against the driver Pritam Chand. The Honøble Judge said that it is not your duty to see the evidence. The PW9 told the honøble court that the detailed investigation had been conducted but there was no involvement

of the driver Pritam Chand. The hon;ble court insulting me said that **“Ye gadhey ka Bachcha Kaun Hai”**. On this PW 9 told that he was SHO Keshav Puram and you should not use these insulting words. The honøble judge ordered the Naik Court Chaman Prakash to take him in custody. The HC Chaman Prakash immediately caught up his hand and made him stand near almirah. P.W.9 said to HC Chaman Prakash that without written order no custody could be effected but the HC did not pay heed towards his words. In the meantime some advocates came inside the court room and among them advocate Saroha and Rajeev Tehlan were known to him. They torn off his police dress and advocate Saroha blow the fist on his nose by which the nasal bone was fractured. SI Rakesh and other public persons saved him from the beatings of advocates. HC Chaman Prakash did no effort to save him & Rakesh called PCR and they took him to hospital.

The statements of PWs were recorded and during the enquiry and evidence on record, which all were examination. After examined the formal charge was prepared by the undersigned and the same was got approved from disciplinary authority. The charge inter alia reads as under: I, Inspector K.P.Tomar (Inspector Investigation) PS Shalimar Bagh, North West District Delhi Charge you HC Chaman Parkash No.69/NW that while posted as Naib Court in MACT, Room No.19, Rohini Courts, on 27.9.2011 at about 2.30 PM, SHO Vijay Vats an SI Rakesh Duhan of PS Keshav Puram came to attend the Honøble Court of Sh.Chander Bose, Judge, MACT in case FIR No.271/09 P.S.Keshav Puram, court case titled Pappu vs. SHO, Keshav Puram. The Ld. Judge insisting on arresting of the driver of car No.DL-2-CQ-3070, but no evidence was on case file against driver of above said car. During the submission made by Insp. Vijay Kumar on this aspect, the Honøble Court inferred that the SHO is interfering in the Court proceedings and asked you HC Chaman Prakash, Naib Court to take the SHO in custody. You took the SHO in custody without any warrant of arrest. Meanwhile, some advocates reached in the court room and started abusing and thrashing the SHO. Due to which, the SHO sustained injuries and fell down in the court room but you did not intervene to save the SHO and to maintain law and order in the court room and displayed high degree of cowardice. You even not called any assistance from any law enforcing agency and then did not report the matter to the

Senior officers as was required to report the matter relating to the incident involving law and order in the court room.

The above act on your part HC Chaman Parkash No.69/NW amounts to display high level of cowardice act, gross misconduct, dereliction of your official duty and unbecoming of a police officer making you liable for punishment under Delhi Police Act as envisaged in Delhi Police (Punishment & Appeal) Rules, 1980.

The charge was served upon the delinquent HC Chaman Prakash 69/NW. The HC did not plead guilty of the charge and preferred to contest further. He was directed to produce his defence witness and he produced a list of three defence witnesses and after the recording of the statements of DWs HC Chaman Prakash produced his own statement.

Evaluation of Evidence:

During the course of enquiry total 9 PWs were examined in support of charge. The PW1 SI Rakesh Duhan proved that on 27/9/11 when the honøble court abused the SHO Keshav Puram, Inspr. Vijay Kumar, the SHO said the honøble judge not to use the abusive words. In the meantime being resented over the SHO's words which were used as a request, the honøble Judge called the advocates and they torn off the police dress of SHO Keshav Puram and the advocates assaulted on his face. The HC Chaman Prakash who was present inside the court room, did not save the SHO Keshav Puram. The PW-2 Sh.Rajender Singh also proved the presence of the honøble judge on the seat when the advocates assaulted SHO, Inspr. Vijay Kumar inside the court room. He did not see the HC Chaman Prakash that he was helping the Inspr. Vijay Kumar. P.W.3 Sh.Raj Sharma proved that the Inspr. Vijay Kumar was assaulted by the advocates inside the court room. The PW 4, Sh.Devender Goyal proved that after the abusive words used by the honøble court, the SHO Vijay Kumar requested the court not to use the insulting words on him then a short argument between SHO and honøble court took place and 30 ó 40 advocates assasulted the SHO inside the court room. PW-4 Sh.Devender Goyal proved the cowardice act of the HC Chaman Prakash as he was present in the court room. The PW-5 constable Braham, PS Prashant Vihar proved the DD entry regarding the assault on SHO Keshav Puram by some persons and the FIR No.440/11 dt.27/9/11 u/s 186, 353, 333/34 IPC P.S.Prashant Vihar. The PW-6 HC Narender No.305/NW

MACT Cell told that HC Chaman Prakash had informed the MACT Cell North West Distt. The PW 7 HC Vijay 376/NW P.S.Keshav Puram proved the DD entries regarding arrival and departure in the Rojnamcha. P.W.8 Sh.Pritam Chand proved that the assault on SHO Keshav Puram by the advocates took place inside court room and the Naib Court HC Chaman Prakash had caught hold the hand of SHO Vijay Kumar to effect the arrest on the verbal order of the honøble court. He did not help the SHO from beating by advocates. P.W.9 Inspr. Vijay Kumar proved that he was assaulted inside the court room and HC Chaman Prakash did not save him from the assault. The PW 9 proved that he was taken into custody by catching his hand inside the court room.

Three DWs were examined during the DE but nothing could be adduced by the DWs as the facts. They all said that the SHO was not assaulted inside the court room.

The delinquent HC Chaman Prakash produced his statement which was examined properly.

Conclusion:

After carefully going through the statements of PWs, DWs, Statement of delinquent, evidence on record and in view of the discussion I am of the considered view that the charge framed against HC Chaman Prakash no. 69/NW stands proved without any shadow of doubt.ö

20.3 The punishment order dated 28.6.2013 passed by the DA reads

thus:

ORDER

This is the final order in the departmental enquiry initiated against HC Chaman Prakash No. 69/NW (PIS No.28901451) (here-in-after called the defaulter) vide this office order No.10208-30/HAP/NWD(P-I) dated 01.12.2011 on the allegations that he while posted as Naib Court in MACT, Room No.19, Rohini Courts, Delhi, that on dt.27.09.2011 at about 2.30 PM, Sh.Vijay Vats (SHO Keshav Puram) and SI Rakesh Duhan of PS Keshav Puram came to attend the Honøble Court of Sh.Chander Bose, Judge MACT in case FIR No.271/09 PS Keshav Puram (Pappu Vs. SHO Keshav Puram). The Ld. Judge was insisting on arresting of the driver of Car No.DL-2-CQ-3070, but no evidence was on case file against driver of above said car. During the submission made by Inspr.

Vijay Kumar on this aspect the Honøble Court inferred that SHO is interfering in the Court proceedings and asked the HC to take the SHO in custody. The HC took the SHO in custody without any warrant of arrest. Meanwhile some advocates reached in the Court room and started abusing and thrashing the SHO due to which the SHO sustained injuries and fell down in the Court room but the HC did not intervene to save the SHO and to maintain law and order in the Court Room displaying high degree of cowardice. He even not called any assistance from any law enforcing agency and also did not report the matter to the senior officers.

Initially, the above said D.E.was entrusted to Insp. Mukesh Kumar, ATO PS Mayurya Enclave, who prepared the summary of allegations, list of witnesses with their brief depositions & list of relied upon documents and served the same upon the defaulter HC Chaman Prakash, No. 69/NW on 15.12.2011 against his proper receipt. Thereafter, the Enquiry Officer examined 01 PW. Subsequently, the Enquiry Officer transferred from this Distt. , hence the said D.E.was transferred to Insp. K.P.Tomar, Insp./Crime Investigation of PS Shalimar Bagh vide this office order No. 5175-76/HAP(P-II)/NWD dated 18.6.2012. Thereafter, the EO examined the remaining PWs. After testimony of the PWs, the EO prepared the Charge on 30.03.2013, got it approved from the disciplinary authority on 02.04.2013 and served the same upon the defaulter HC on 02.04.2013 against his proper receipt. In the questionnaire, the defaulter HC was asked to submit the list of DWs to be produced in his defence, if he desires so, within 3 days and to submit defence statement against the Charge within 10 days from its receipt. Defaulter HC produced 3 DWs in his defence who have been examined by the Enquiry Officer. Further the defaulter HC also submitted his defence statement to the charge on 02.05.2013. Thereafter, the Enquiry Officer prepared his findings and submitted the same concluding therein that "After carefully going through the statements of PWs, DWs, statements of delinquent, evidence on record and in view of the discussion, I am of the considered view that the charge framed against HC Chaman Prakash, No. 69/NW stands proved without any shadow of doubt."

Tentatively agreeing with the findings of the E.O., a copy of the same was served upon the defaulter Head Constable vide this office U.O.No. 4395/HAP/NWD(P-I) dated 15.05.2013 which he received on 17.5.2013 against his proper receipt. In the said U.O. the defaulter Head Constable was directed to

submit his representation against the findings of the E.O. within 15 days from the date of its receipt. Accordingly, the defaulter Head Constable submitted his representation against the findings on 30.5.2013.

I have gone through the statements of PWs, Charge, statements of DWs, defence statement to the Charge, findings of the E.O., the representation against the findings of the defaulter HC, the report of Registrar (Vigilance), Delhi High Court and other relevant record brought on the DE file. The defaulter HC was also heard in Orderly Room on 01.06.2013 wherein he reiterated the points mentioned in his defence statement and reply to the findings. The main contention of the defaulter HC is that the D.E.proceedings are totally based on one sided version of the police personnel. He also pleaded that the Inspector was not assaulted inside the court room and everything happened outside the court room. He also pleaded that as per the enquiry report of Registrar (Vigilance), Delhi High Court the incident has not happened inside the court room and hence the charge are false and motivated.

Firstly of all I gone through the enquiry report of Registrar (Vigilance), Delhi High Court. The report is based upon only two witnesses who are the officers of the court. These two witnesses wer eproduced as defence witnesses by the defaulter HC and they reiterated the same facts as given in the earlier enquiry of Registrar (Vigilance). However, during the DE proceedings, a total 9 PWs were examined and all of them clearly revealed that the incident of attach on SHO has happened inside the court room. Among these 9 PWs, S/Sh. Raj Sharma and Devender Goyal are independent witnesses and they clearly told that the defaulter HC has held the custody of SHO/Keshav Puram, Shri Vijay Vats and the incident of physical assault on Shri Vijay Vats has happened inside the court room.

Hence, I am of the opinion that the defaulter HC has held the custody of Inspector Vijay Vats and that has made the physical assaults of the lawyers easy. Moreover the Naib Court, being a police personnel on duty in the court, he might have taken efforts to stop the assault to maintain order in the court. But he did not do so which proves his cowardice act and unfit to become a police officer.

The questions asked by the Defence Assistant clearly reveal that the defaulter HC tried to cover up his cowardice act and to prove the same he tried all means through his Defence Assistant. In most of the cross-examinations of the PWs the

facts alleged in the charge are proved. Even the statement of DWs wherein they informed that the defaulter HC has gone outside for 10-15 minutes for washroom seems to be doubtful under the above said circumstances. Hence, the undersigned came to a conclusion that such an officer is not fit to continue in service.

In view of the above, I, Dr. P.Karunakaran, Dy.Commissioner of Police, North-West District, Delhi, hereby award the punishment of dismissal to defaulter HC Chaman Prakash No.69/NW with immediate effect, which would meet the ends of justice.

For his above misconduct, the defaulter HC Chaman Prakash No. 69/NW was placed under suspension vide this office order No. 8367-86/HAP/ NWD (P-I) dated 28.9.2011 and he is still under suspension. As such, his suspension period w.e.f. from 28.9.2011 to till date is also decided as a period not spent on duty for all intents and purposes.

20.4 The order dated 2.6.2014 passed by the AA reads thus:

ORDER

This is an order in the appeal filed by Ex.HC Chaman Prakash, No. 69/NW (PIS No.28901451) (hereinafter called the appellant) against the punishment of dismissal from service awarded by DCP North-West District, Delhi, vide order No. 6294-6364/HAP/NWD(P-I) dated 28-06-13.

The facts of the case are that the appellant while posted as Naib Court in MACT, Room No.19, Rohini Courts, Delhi, that on dated 27.09.11 at about 2.30 PM, Sh.Vijay Vats (SHO/Keshav Puram) and SI Rakesh Duhan of PS Keshav Puram came to attend the Honøble Court of Sh.Chander Bose, Judge, MACT in case FIR No.271/09 PS Keshav Puram (Pappu Vs. SHO/Keshav Puram). The Ld. Judge was insisting on arresting of the driver of car No.DL-2-CQ-3070, but no evidence was on case file against driver of above said car. During the submission made by the Inspector Vijay Vats on this aspect the Honøble Court inferred that SHO is interfering in the court proceedings and asked the appellant to take the SHO in custody. The appellant took the SHO in custody without any warrant of arrest. Meanwhile some advocates reached in the court room and started abusing and thrashing the SHO due to which the SHO sustained injuries and fell down in the court

room but the appellant did not intervene to save the SHO to maintain law and order in the court room displaying high degree of cowardice. He even not called any assistance from any law enforcement agency and also did not report the matter to the senior officers.

A regular departmental enquiry was initiated against the appellant vide order No.10208-30/HAP/NWD(P-I) dated 01.12.2011. The enquiry officer completed the departmental enquiry and submitted his findings concluding therein that charge stands proved beyond any shadow of doubt. A copy of the findings was served upon the appellant for seeking his representation against the findings. His written representation was not found satisfactory by the disciplinary authority and he was awarded the punishment vide order appealed against.

In his appeal, the appellant has taken main plea that alleged incident had taken place outside the court room and these contents were also submitted by the defence witnesses before the E.O. He also submitted a copy of judicial inquiry report of Registrar (Vigilance), High Court of Delhi which was conducted in the matter on the reference sent by Ld.District & Additional Sessions Judge, Rohini Court. In this, it was concluded that incident of assault had not taken place inside the court premises. He has further taken the plea that Inspr. Vijay Vats, ,the then SHO/Keshav Puram was not called by the Ld. Court in Case FIR No.271/09. Secondly, the Inspector should have made his departure to the Rohini court but he did not do so.

As per S.O.No.50 regarding duties of Naib Courts, the naib-courts are attached to the courts as well as the naib-courts posted from each police station working under the close supervision of the Prosecuting Officer. Out of main duties of the naib-courts as per S.O.No.50, one is to maintain law and order in the court to which he (the appellant) was attached.

In view of the above, the appellant had failed to do his duty assigned to him as Naib Court. He took the SHO in custody without any warrant of arrest from the learned Court. He did not intervene to save the SHO from some advocates who reached in the court room and also failed to maintain law and order in the court room. He showed high degree of cowardice. He even did not bother to make a call to PCR and not called for

any assistance from any law enforcement agency. He also did not report the matter to the senior officers.

The appellant was heard in O.R. on 19.2.2014 by the undersigned. During O.R., he only repeated the pleas taken by him in his appeal. The appellant has mainly taken the plea that all 3 defence witnesses have deposed during cross examination that the alleged incident took place outside the court room. The appellant has also given the reference of judicial inquiry report of Registrar (Vigilance), High Court of Delhi which was conducted in the matter in which it was concluded that incident of assault has not taken place inside the court premises as mentioned in the FIR. The appellant has also taken the plea that the Sh.Vijay Vats, the then SHO/Keshav Puram was not called by the Ld. Court in the case FIR no.271/09 and secondly he did not make his departure to the court of Sh.Chandra Bose at Rohini. The appellant further stated in his appeal that Insp. Vijay Vats deliberately and intentionally created a false story against him.

I have carefully gone through the facts and circumstances of the case, material available on DE file and verbal submissions of the appellant. On scrutiny of DE file, it has been revealed that the plea taken by the appellant that the incident of physical assault with SHO/Keshav Puram occurred outside the court is totally wrong. On going through the statements of PW-1 to PW-4, PW-8 and PW-9 including Public/independent witnesses who were present at the time of incident, it is clear that the appellant had taken Sh.Vijay Vats the then SHO/Keshav Puram in his custody without having any written order/arrest warrant from the learned court. It has also been established from the statements of PW-1 to PW-4, PW-8 and PW-9 that the incident of attack on SHO took place inside the court. The above PWs had also clarified these facts while cross-examined by the appellant during DE proceeding. With regard to the reference of enquiry report of the Registrar (Vigilance) Delhi High Court, it is found that the enquiry report of the Registrar (Vigilance), Delhi High Court, was not part of DE and was not discussed during departmental proceeding. The appellant has only submitted the same in his defence statement. On the other hand, it is based upon only two witnesses, who were the officers of the court. Both the witnesses were also produced by the appellant during the DE proceedings as defence witnesses. On a perusal of the statement of PWs and

DWs, it has been found that the defence witnesses had a different story from that of PWs. The matter whether the SHO/Keshav Puram was called by the Ld. Court or that he did not make his departure to the court of Sh.Chander Bose, Rohini has no concern with the allegations leveled against the appellant.

As per above discussions, I am of the view that the appellant has taken Insp. Vijay Vats, the then SHO/Keshav Puram in his custody without having proper written order/arrest warrant from court. Even then, during his illegal custody, Sh.Vijay Vats, the then SHO/Keshav Puram was physically assaulted by the lawyers and he did not make any effort to stop the assault on him and also failed to maintain law and order in the court. Being a member of disciplined force, he ought to have made adequate efforts to save the SHO from assault by lawyers in the Court Room which he did not do. Now, he is only trying to create a false and concocted story with view to defend him. His act has put a blot on the police force. The act committed by the appellant is highly reprehensible and unbecoming of police official.

Keeping in view the above facts and circumstances, I am of the considered view that the appellant deserve no leniency and punishment awarded by the disciplinary authority requires no interference. Hence, the appeal is rejected.

The appellant be informed accordingly.ö

21. On a perusal of the proceedings recorded by the Judge, MACT, Rohini Courts, Delhi, on 27.9.2011 in case FIR No. 271/09, the enquiry report submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi, the findings of the EO, and the orders passed by the DA and AA, we have found that the defence pleas and the documents produced by the applicant along with his written statement of defence in the departmental enquiry have not been appreciated in their proper perspective and/or have been ignored by the EO, DA and AA. The EO has failed to consider the

pleas raised by the applicant in his written statement of defence, the statements made by the DWs, the proceedings dated 27.9.2011 recorded by the Judge, MACT, Rohini Courts, Delhi, and the enquiry report submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi. The reasons assigned by the DA for rejecting the defence pleas and the documents filed by the applicant along with his written statement are not convincing. The DA has also failed to appreciate the statements made by DWs 1 and 2, the officers of the MACT Court who were present in the court on 27.9.2011. The AA has not only disbelieved the statements of DWs 1 and 2 without any justifiable reason, but also has gone to the extent of observing that the enquiry report submitted by Shri A.S.Yadav, Registrar (Vigilance), Honøble High Court of Delhi, did not form part of the record. When on the direction of the Administrative and General Supervision Committee of the Honøble High Court of Delhi, Shri A.S.Yadav, Registrar (Vigilance) of the Honøble High Court of Delhi, conducted the enquiry in the matter and submitted the enquiry report finding that the alleged incident of assault did not take place inside the court room on 29.9.2011, the DA and AA cannot be said to have acted judiciously in ignoring the finding arrived at by Shri A.S.Yadav, Registrar (Vigilance) of the Honøble High Court of Delhi, who happened to be an officer of the rank of Additional District & Sessions Judge. Furthermore, when the proceedings dated 27.9.2011 recorded by the learned Judge, MACT, in Case FIR No.271/09, do not mention the alleged

incident of assault by the lawyers to Shri Vijay Kumar, SHO, PS Keshav Puram, in the court room, and when DWs 1 and 2, the Stenographer and Reader attached to the court of MACT stated during the enquiry conducted by Shri A.S.Yadav, Registrar (Vigilance), Honøble Delhi High Court, and also during the departmental enquiry that no incident of assault by the lawyers to Shri Vijay Vats, SHO, PS Keshav Puram, took place inside the court room, the DA and AA cannot also be said to have acted judiciously in brushing aside the proceedings dated 27.9.2011 recorded by the Judge, MACT, Rohini Courts, Delhi, in Case FIR No.271/09 and the statements of DWs 1 and 2, and in preferring to accept the statements of PWs. In this view of the matter, we have no hesitation in holding that the findings of the EO and the orders passed by the DA and AA suffer from non-consideration of the materials available on record and/or non-application of mind by those authorities to the materials placed by the applicant in support of his defence and available on record of the departmental enquiry, and that on the materials available on record of the departmental enquiry, the findings arrived at by the EO, DA and AA are such as no reasonable person would have ever reached. Thus, the impugned findings of the EO and the orders passed by the DA and AA stand vitiated.

22. In the light of our above discussions, the impugned findings of the EO and the orders passed by the DA and AA are quashed and set aside. We would have remitted the matter back to the DA to reconsider the

materials/evidence produced both by the prosecution and defence in the departmental enquiry, and to pass a fresh order in the departmental enquiry, but for the death of the original applicant during the pendency of the present proceedings before the Tribunal. Considering the totality of the facts and circumstances leading to initiation of the departmental enquiry and also the gravity of the charge levelled against the original applicant, we quash the entire disciplinary proceedings and direct the respondents to treat the original applicant as reinstated in service with effect from the date when he was dismissed from service, and as continued in service till the date preceding the date of his death, and to grant consequential service benefits to applicant no.1(widow of the original applicant) and/or any other members of his family as per rules. The directions contained in this order shall be complied with by the respondents within three months from today.

23. Resultantly, the O.A. is allowed to the extent indicated above.

No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

AN

