CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.2055/2011

New Delhi this the 3rd day of June, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Head Constable Bijender Singh
S/o Shri Banwaari Lal
No. 773-T, PIS No.28900135
R/o. C-6, Police Colony,
Mangol Puri,
New Delhi. .....Applicant

(Argued by: Shri Sachin Chauhan, Advocate)

Versus

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
MSO Building, New Delhi.

2. Dy. Commissioner of Police.
Traffic (SR), through
Police Headquarters,
I.P. Estate,
MSO Building, New Delhi.

3. Dy. Commissioner of Police,
7th Bm. DAP, through
Police Headquarters,
I.P. Estate,
MSO Building, New Delhi. ..Respondents

(By Advocate: Shri N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in the instant Original Application (OA), filed by the applicant, HC Bijender Singh, is to the impugned, order dated 02.04.2009 (Annexure A-1), whereby

Departmental Enquiry (DE) was initiated against him and impugned order dated 17.12.2009 (Annexure A-2), by virtue of which a penalty of forfeiture of one year approved service temporarily, entailing subsequent reduction in the pay for a period of one year, was imposed by the Disciplinary Authority (DA). He has also assailed the impugned order dated 10.09.2010 (Annexure A-3), by means of which his appeal was dismissed as well by the Appellate Authority (AA).

2. The crux of the facts and material, relevant for deciding the present OA, and emanating from the record is that, on the night intervening 04/05.03.2009, at about 09.30 P.M., applicant snatched Registration Certificate (RC), Driving Licence (DL) and other documents from Rishi Dev , Driver of Light Goods Vehicle (LGV) bearing registration No.DL-1LC-2147 and demanded Rs.1,000/- as illegal gratification to return the documents. Thus, he was stated to have committed a grave misconduct, during the course of his employment. Thus, he was dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereafter to be referred as "D.P. Rules").

3. As a consequence thereof, he was charge sheeted in the following manner:-

> "It is alleged against HC Bijender Singh No. 773/T (PIS No. 28900135) that on 05.03.09, when Inspr. Ramesh Chand, TI/Maya Puri Circle came for duty in Maya Puri Circle, during corridor and staff checking, it came to his notice that on the night of 04/05.03.09 at about 9.30 PM Motor Cycle Patrolling rider HC Bijender Singh No. 773/T snatched R/C & driving

licence of one LGV No. DL-ILC-2147 from driver Rishi Dev R/o. 51/7, Onkar Nagar (B), Tri Nagar, Delhi and at present those documents are with MHC (M) Dilbagh Singh No. 411/T. TI called MHC Dilbagh No. 411/T at the pit of Maya Puri who told that on 04.03.09 at about 10 PM. when he was going to home via Maya Puri Chowk he found H.C. Bijender present at Maya Puri Chowk with his Motor Cycle No. DL-ISH-9307 and some documents were in his hand. HC Dilbagh asked to HC Bijender at this time what is he doing here and what documents are in his hand. HC Bijender told him that these documents are of one LGV driver who will come tomorrow with Rs.1000/- and he will return the said documents to the driver of the LGV. H.C. Dilbagh took those documents immediately in his possession and advised him (HC Bijender) that his conduct is not proper, he has no authority to take the documents illegally. Later on HC Bijender keft the place and MHC (M) Dilbagh kept these documents and locked in Police booth. On 05.03.09 at about 11 AM one Mr. Manish Kumar & driver Rishi Dev Tiwari came at Maya Puri PS near traffic pit and told the story to MHC (M) Dilbagh Singh that HC Bijender chased the LGV No. DL-1LC-2147 & stopped it, took the R/C & D/L in his possession and demanded Rs.2000/- for the challan. When the driver of the LGV failed to pay, he stopped the driver, beaten him and further instructed to bring Rs.1000/- at Maya Puri against the delivery of papers. HC Dilbagh asked Mr. Manish Kumar to make a written complaint. MHC(M) Dilbagh No. 411/T also immediately brought into the notice of ACP/Traffic/SW Distt by telephone after the initial enquiry who advised him for necessary action and ordered to complete the enquiry. ASI Ram Kishor, No. 2384/T brought the DL/RC at pit which were handed over to the owners and collected photocopies for evidence.

The above act on the part of HC Bijender No. 773/T (PIS No. 28900135) amounts to gross negligence, carelessness, indulgence in malpractice and dereliction in the discharge of official duties which renders him liable for departmental action and dereliction in the discharge of official duties which renders him liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules-1980."

4. Consequently, the Enquiry Officer (EO) was appointed, who recorded the statements of the prosecution witnesses, as the applicant did not produce even a single witness in his defence. He (EO) completed the enquiry and came to a definite conclusion that charges against the applicant stand fully proved vide impugned enquiry report dated 06.09.2008 (Annexure A-4).

5. Agreeing with the findings of the EO, the above mentioned penalty was imposed on the applicant vide impugned order 17.12.2009 (Annexure A-2), by the DA. The appeal filed by him was also dismissed by order dated 10.09.2010 (Annexure A-3) by the AA.

6. Aggrieved thereby, the applicant has preferred the instant OA, to challenge the impugned orders, invoking the provisions of Rule 19 of the Administrative Tribunals Act, 1985, and claimed the following relief:-

> "(i) To set aside the impugned orders from A-1 to A-4 and to further direct the respondents to restore the forfeited year of service alongwith pay and allowances with all consequential benefit including seniority and promotion.
>
> (ii) Any other relief which this Hon'ble Court deems fit and proper may also be awarded to the applicant".

7. The case set-up, by the applicant, in brief, insofar as relevant, is that the EO has considered the extraneous material and thus his report is bad in law. It was pleaded that Shri Ramesh Chander, Inspector, TI has conducted the preliminary enquiry, but no prior approval to initiate the regular enquiry was obtained, hence, there was a clear violation of Rule 15(2) of D.P. Rules. The EO, DA and AA were stated to have not considered/discussed the entire evidence, including the statement of HC Dilbagh Singh, which vitiate the DE and caused a great prejudice. Applicant did not commit any misconduct.

8. According to the applicant, the impugned orders are non-speaking, illegal, arbitrary, mala fide, whimsical, non-speaking and against the principles of natural justice. On the basis of the aforesaid grounds, the applicant sought to quash the aforesaid inquiry proceedings and impugned orders, in the manner indicated hereinabove.

9. The contesting respondents refuted the claim of the applicant and filed the counter reply, wherein the factual matrix was acknowledged, inter alia, in the following manner:-

> "That a Departmental Enquiry was initiated against HC Bijender Singh (herein after called the applicant) vide order dated 02.04.2009 alleging therein that on 05.03.2009 at about 9.30 PM, Motor Cycle Patrolling Rider HC Bijender Singh snatched R/C & Driving License/ Possessed documents of one LGV No. DL-1LC-2147 from the driver Rishi Dev R/o 51/7, Onkar Nagar (B), Tilak Nagar, Delhi and at present these documents are with MHC (M) Dilbagh Singh, Traffic Inspector called MHC Dilbagh at the pit of Maya Puri who told that on 04.03.2009 at about 10 PM when he was going home via Maya Puri Chowk he found HC Bijender Singh present at Maya Puri Chowk with his Motor Cycle No. DL-1SH-9307 and some documents were in his hand. He asked the reasons of his presence there and documents in his possession. Applicant herein told him that these documents are of one LGV driver who will come next day with Rs.1000/- and then he will return the same to driver of the LGV. HC Dilbagh took these documents immediately in his possession and advised HC Bijender Singh that his conduct was not proper as he has no authority to take possession of the documents illegally and have no power to challan more than under section 177 MV Act. Later on HC Bijender Singh left place and MHC (M) Dilbagh kept these documents and locked in Police Booth. At about 11 AM one Manish Kumar and Driver Rishi Dev Tiwari came to police station Maya Puri near traffic pit and told the incident to MHC (M) Dilbagh Singh that HC Bijender Singh chased the LGV No. DL-1LC-2147 and stopped it, took the Registration Certificate & Driving License in his possession and demanded Rs.2000/- for Challan. When the driver of the LGV failed to pay, he stopped the driver and beaten him and further instructed to bring Rs 1000/- at Maya Puri against the delivery of papers. H.C. Dilbagh asked Manish Kumar to make a written complaint, MHC Dilbagh also immediately brought these facts to notice of

> ACP/Traffic/South West Distt., by telephone after the initial enquiry, who advised him for necessary action and ordered to complete the enquiry. ASI Ram Kishore brought the Driving License and Registration Certificate at pit, which were handed over to the owners and photocopies collected for evidence. A site plan of place of incident was also prepared."

10. According to the respondents, the EO has recorded the statements of prosecution witnesses, completed the enquiry and came to the definite conclusion that the charges framed against the applicant stand fully proved. The findings of EO and evidence of witnesses were duly appreciated. The applicant has not examined a single witness in defence.

11. Virtually reiterating the validity of the impugned Enquiry Officer's report and orders, it was claimed by the respondents that the applicant was guilty of grave misconduct and was accordingly rightly punished. It was pleaded that the impugned orders are legal, were passed after due application of mind and following due procedure. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the O.A. and prayed for its dismissal.

12. Controverting the allegations of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant filed the rejoinder. That is how we are seized of the matter.

13. After hearing the learned counsel for the parties, going through the record with their valuable help and after

considering the entire matter, we are of the firm view that there is no merit in the instant OA.

14. Ex-facie, the main celebrated argument of learned counsel that Inspector Ramesh Chand, TI, conducted the preliminary enquiry and since no prior approval to initiate regular DE was obtained from the DA, so there is a clear violation of Rule 15 (2) of D.P. Rules, which vitiate the enquiry proceedings, is not only devoid of merit, but misplaced as well.

15. As is evident from the record and also stated by PW-5, Inspector Ramesh Chand that complainant, Manish Kumar filed the written complaint against the applicant and he (Ramesh Chand, Inspector), brought the same complaint in the knowledge of ACP, who asked him to enquire into the matter. He handed over the DL and RC in original by retaining their photostat copies, to the Driver and complainant, after preparing the memos signed by them (witnesses). During the enquiry, he prepared the rough site plan of the place of occurrence at the instance of Driver Rishi Dev, which was attested by the witnesses. He recorded the statements of Driver, Rishi Dev and complainant Manish Kumar.

16. That means, Ramesh Chand (PW-5), has recorded the statements of witnesses to ascertain the truth or otherwise of the complaint filed by complainant, Manish Kumar. Such

statements recorded by PW-5 are the matters of step-in-aid of investigation to verify the facts of the complaint and would fall within the meaning of Section 2(h) of Criminal Procedure Code and cannot legally be termed to be statements recorded during preliminary inquiry, as contemplated under Rule 15 of the D.P. Rules.

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

18. Therefore, the statements recorded by PW-5 to ascertain the truth or otherwise of the contents contained in the complaint filed by the complainant Manish Kumar, cannot legally be termed to be the statements recorded in the preliminary enquiry. The preliminary enquiry can only be conducted under Rule 15 (2) of the D.P. Rules, as specifically ordered by the DA in this regard, and not otherwise. This matter is no more res-integra and is now well settled.

19. An identical question came to be decided by the Full Bench of Hon'ble High Court of Delhi in case of **Constable Rajender Kumar Vs. Govt. of NCT of Delhi and Ors. 2009 (111) DRJ 320** wherein, having considered the provisions of Rules 15 & 16 of the D.P. Rules, it was held as under :-

> "14. It is thus clearly seen that preliminary inquiry is for the purpose of collection of facts in regard to conduct and work of the government servant in which he may or may not be associated and as such for the satisfaction of the government which may decide whether or not to subject the government servant to departmental inquiry for inflicting any of the punishments mentioned in Article 311. Although, usually, for the sake of fairness, explanation is taken from the government servant, but he has no right of being heard because it is for satisfaction of the government. Therefore, since, the preliminary inquiry is held for the satisfaction of the government, necessarily it can be held after an order passed by the competent authority of the government.
>
> 15. A bare perusal of sub-rule (1) of Rule 15 would manifest that preliminary inquiry is held only in cases of allegations, which are of weak character, and before the department resorts to regular departmental inquiry it may like to ascertain veracity of the facts which are subject-matter of complaint against the delinquent. The purpose of preliminary inquiry has been mentioned in sub-rule (1) of Rule 15 which is (i) to establish the nature of default and identity of defaulter(s); (ii) to collect prosecution evidence; (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental inquiry. The provisions contained in Rule 15(1) also unequivocally clothe the departmental authority to straightaway order departmental inquiry in cases where specific information covering the above-mentioned points exists, and preliminary inquiry need not be held. It is only in other cases i.e. where matters as mentioned in sub-rule(1) of Rule 15 have to be ascertained that a preliminary inquiry is ordered. Further it is pertinent to note that Rule 15(3) provides that "all statements recorded during the preliminary inquiry shall be signed by the person making them and attested by the Inquiry Officer". In other words, it provides a procedure for preliminary inquiry that statements have to be attested by Inquiry Officer. Thus, preliminary inquiry has to be by Inquiry Officer who has been appointed for the purpose. The appointment has to be necessarily by the disciplinary authority or an appropriate authority in this regard. Any person who records the statement of a delinquent and forwards the same with his report to the disciplinary authority cannot be taken to be Inquiry Officer. In other words a preliminary inquiry can only by an officer appointed for the

purpose. Even if a person on his own investigates into the fact without the order of the competent authority, at best it can be taken to be information supplied to the authority rather than a preliminary inquiry. If such information is received pursuant to a raid, investigation or vigilance inquiry it cannot be equated with a preliminary inquiry. The competent authority can order preliminary inquiry in case he feels that facts have to be collected.

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

> 17. On going through the Division Bench judgment in Deputy Commissioner of Police v. Ravinder Singh it is seen that though it approves the reasoning of the Tribunal in the case of Ravinder Singh it was only to the extent that when the ingredients of sub-rule (1) of Rule 15 are satisfied, the file is to be put up before the Additional Commissioner of Police. There was no discussion on the question as to what constitutes a preliminary inquiry. It was not even remotely urged before the Division Bench that inquiry conducted by Anti Corruption Cell of Vigilance Cell would partake the character of a preliminary inquiry as envisaged in Rule 15(2). We find that the question as to what is preliminary inquiry has not been gone into. In our opinion the two Full Bench decisions of the Tribunal lay down the law correctly. We accordingly hold that there has to be an order to initiate preliminary enquiry by the competent authority. The preliminary enquiry must precede the departmental enquiry to collect the facts contemplated under Rule 15(1) of the Rules. Anti-corruption raids, investigation or vigilance enquiry including the enquiries by PGR Cell cannot be equated with preliminary enquiry as contemplated under Rule 15(2) unless there was an order by the competent authority to hold such an enquiry contemplated under Rule 15(1) of the Rules.
>
> 18. The facts of the present case reveal that the petitioner and his co-delinquent were seen by Shri R.S.Chauhan, ACP accepting bribe. Inquiry was made from the truck driver and others on the spot and their statements were recorded on the spot. Report of the ACP, which was based on the spot collection of some material, would not partake the character of a preliminary inquiry as envisaged in Rule 15(1) of the Rules. That apart, a preliminary inquiry has necessarily to be ordered by the disciplinary authority and, therefore, any other inquiry, which is not ordered by the disciplinary authority, would not be a preliminary inquiry at all. The issue is answered accordingly. Let the papers be placed before the Division Bench for disposal of the writ petition".

20. Therefore, the statements of witnesses recorded by PW-5, in order to ascertain the truth or otherwise of the allegations contained in the complaint, cannot legally be termed to be statements recorded during the course of preliminary enquiry, as urged on behalf of the applicant. Admittedly, the DA has not ordered the holding of preliminary enquiry in this case. In this manner, once it is proved that no preliminary enquiry was ordered by DA and pointed

statements recorded by the PW-5 in a routine enquiry, in the wake of complaint of complainant Manish Kumar, in that eventuality, the questions of obtaining prior approval of Additional Commissioner of Police concerned or violation of Rule 15(2) of D.P. Rules, did not arise at all, under the present set of circumstances, as contrary urged on behalf of the applicant, particularly when the regular DE was duly initiated against the applicant in pursuance of the impugned order dated 02.04.2009 (Annexure A-1) passed by the competent authority.

21. Now adverting to the next submission of the learned counsel, that there is no cogent evidence on record against the applicant, in this regard, the prosecution, in order to substantiate the charge framed against the applicant, has examined PW-1 HC Raj Kumar, who has proved the posting of the applicant at the relevant time.

22. The next to note is the testimony of PW-2 HC Dilbagh Singh, who has deposed in the following terms:-

> **"PW-2: Statement of HC Dil Bagh Singh No. 411/T Traffic Circle Maya Puri, Delhi**
>
> Stated that he is posted in Maya Puri Traffic Circle as HC and working as MHC (Chitha Munshi). He attended the DE Cell on summoning in connection with the DE against HC Bijender Singh No. 773/T. He produced original Chitha dated 05.03.2009 of MPC, in which the duty of said HC Bijender Singh is mentioned from 9 AM to 9 PM at Sagar Pur Lajwanti Chowk Halting point. He produced the photocopy of the chitha which has been marked as Ex.-PW-2/A and original chitha returned to him after seeing (sic) the duty point of HC Bijender Singh and signed on it. He further stated that on 04.03.2009

at about 9.30 PM/9.45 PM, after doing his duty he was going to home via Maya Puri Chowk. He had checked the points falling in the way and reached Maya Puri Chowk because TI Sh. Ramesh Chand was on permission after 6 P.M. When he reached Maya Puri point, HC Bijender Singh No. 773/T was present there. He asked the reason to HC Bijender for his presence there. HC Bijender told that he had to challan a vehicle but the persons of that vehicle left the papers of that vehicle with him and went away. He (PW-2) had (sic) taken these papers from HC Bijender and put them safely in the traffic booth there. He asked to HC Bijender to go home and as and when any person of that vehicle came to receive these papers in the morning then cut down the challan. He had also told this conversation to TI. In the morning when he reached on his duty, he also told ASI Ram Kishor that if any person of that vehicle comes whose papers are kept there, the same may be given to him and challan the vehicle. Thereafter he (PW-2) went to R. K. Puram Traffic Office and then TI asked him where are (sic) those papers about which he had told in the evening are, then he told that those papers are in the traffic booth and he had already told to ASI Ram Kishor, let be asked him to bring the papers.

During cross examination by defence assistant on behalf of delinquent HC Bijender Singh No. 773/T, this PW deposed that he had neither seen that vehicle whose papers are there nor driver etc. near the Maya Puri Chowk. The driver of that vehicle not met to him on the very next day. Neither he had received any complaint against HC Bijender from the driver of that vehicle nor recorded any statement of the driver. TI had not made any enquiry in this regard before him".

23. Similarly, PW-3 recorded the report in roznamcha of Maya Puri Circle and informed the Traffic Inspector. PW-4 ASI Ram Kishore, has maintained that on 05.03.2009, he was posted as ZO in Maya Puri Circle. On that day, at about 11.00 AM, he was on duty. In the meanwhile, HC Dilbagh Singh contacted him on mobile and told that at worship place, in the traffic booth, both RC of LGV No.DL-1LC-2147 and driver's licence were there. He took the above said papers and handed over the same to PW-5. Thereafter, PW-5, Inspector

Ramesh Chand, TI gave the true version of the incident in his detailed statement. PW-8 SI Sukhvinder Singh and PW-9 Ct. Ashok Kumar also deposed against the applicant.

24. Not only that, the material witness PW-6 Rishi Dev Tiwari, Driver and complainant Manish Kumar, important witnesses, have also proved the charge framed against the applicant. PW-8 SI Sukhvinder Singh and PW-9 Constable Ashok Kumar have also stated on oath and proved the guilt of the applicant. Instead of reproducing the statements of all the PWs in entirety, and in order to avoid the repetition, suffice it to say that all the witnesses have fully corroborated the charges framed against the applicant, on all vital counts. They were cross-examined, on behalf of the applicant but nothing substantial material could be elicited in the cross-examination to dislodge their testimony, except one line here and there, which are not at all relevant to the real issue.

25. Although the prosecution has examined the above mentioned witnesses, to prove the charges, but the applicant has neither submitted the list nor examined any witness in his defence, for the reasons best known to him. That means the evidence of the prosecution remained un-rebutted.

26. Meaning thereby, there was sufficient evidence and EO has rightly appreciated the entire relevant evidence on record and did not consider any foreign matter, as submitted on behalf of the applicant. He has also recorded valid reason and

came to the conclusion that the charges stand proved against the applicant.

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

28. An identical issue came to be decided by the Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484**, wherein while considering the jurisdiction of judicial review and rule of evidence, it was ruled as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty

of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

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

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P.

S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
>
> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

30. Sequelly, the last contention of the learned counsel that the order of AA is non-speaking, again cannot be accepted. A bare perusal of the record would reveal that the AA has considered all the relevant evidence including the statement of HC Dilbagh Singh, PW-2 and issues raised by

the applicant and passed the detailed order, which, inter alia, in substance, is as under:-

> "The disciplinary authority gone through the representation submitted by the defaulter H.C. Bijender, 773/T, findings submitted by the E.O. as well as other material available on DE file. He was also heard in person on 12.11.2009. In the written statement, as well as in oral submission, defaulter H.C. Bijender, 773/T mainly pleaded that statement of HC Dilbagh Singh made before the Enquiry Officer was not correctly evaluated/assessed and his earlier statement made in the absence of himself has been given undue weight. Inspr. Ramesh Chand's evidence has no credibility as he admitted that he was not an eye witness to any of the fact.
>
> The Enquiry Officer examined 09 PWs in this regard. On the basis of the deposition of PWs, exhibits came on the DE File during DE proceedings and the written defence statement submitted by delinquent HC Bijender Singh No. 773-T, it was proved by PW-1 (HC Raj Kumar No. 507-T of SIP Branch) that the delinquent HC was posted at Maya Puri Traffic Circle during that period, PW-2 (HC Dilbagh Singh No. 411-T, MHC Maya Puri Traffic Circle) has proved the duty of the delinquent HC at Sagar Pur-Lajwant Chowk halting point and the papers of said vehicle were taken by him from the delinquent HC at Maya Puri Chowk. This PW had favour the delinquent HC who was his colleague by deposing that the said papers were left by the driver of LGV with the delinquent HC and he deviated from his earlier statement. PW-2 and PW-4 (ASI Ram Kishore No.2233–D) have also confirmed that the papers were kept by the delinquent. PW-5 Inspr. Ramesh Chand, TI of the circle had fully supported the prosecution theory and proved statement of PW-6 & PW-7 recorded by him. PW-6, the driver of LGV whose papers were kept by the delinquent HC had confirmed that his vehicle was stopped by the delinquent, money was demanded, papers of vehicle were taken by the delinquent, who misbehaved with him also and his statement was recorded by the Traffic Inspector. PW-7 (Sh. Manish Kumar) had clarified that the driver (PW-6) had told him the whole incident happened with him. PW-8 (SI Sukhvinder Singh, Z.O.) & PW-9 (Ct. Ashok Kumar No.4456-T) had confirmed that PW-6 and PW-7 stated the whole incident before the Traffic Inspector Maya Puri and also proved their statement made before TI.
>
> In view of the above discussion, findings of the Enquiry Officer and plea advanced by the defaulter H.C. Bijender, 773/T and considering overall facts, the disciplinary authority awarded the punishment of forfeiture of one year approved service temporarily for a period of one year entailing

> subsequent reduction in the pay from Rs.8740+2400 to Rs.8410+2400 to H.C. Bijender, No. 773/T. His suspension period from 05.03.2009 to 15.10.2009 was decided as 'not spent on duty'. Hence, this appeal.
>
> I have carefully gone through the appeal, D.E. files, orders passed by disciplinary authority and also heard the appellants in O.R. on 03.09.2010. I find that the pleas put-forth by the appellant are not satisfactory/convincing which does not hold any weight. Considering all aspects of the case, I do not find any reason/ground to interfere with the punishment order passed by the disciplinary authority. Therefore, the appeal is rejected being devoid of merits.
>
> Let the appellant be informed accordingly."

31. Therefore, if the epitome of the evidence on record, as discussed hereinabove, is put together and scrutinized on the touchstone of indicated legal position, then no one can escape in recording an irresistible conclusion that it stands established on record that the charges framed against the applicant stands duly **proved**. Hence, the contrary arguments of the learned counsel for the applicant "*stricto-sensu*" deserve to be and are hereby repelled. The ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the present controversy and is the complete answer to the problem in hand.

32. Thus, the EO, DA and AA have examined the matter, recorded cogent reasons, dealing with the relevant evidence of the parties, provided adequate opportunities at appropriate stages to the applicant and appreciated the relevant vital issues & unrebutted evidence on record in the right perspective and passed the reasoned and speaking order. We do not find any

illegality, irregularity or any perversity in the impugned orders. As such, no interference is warranted in the impugned orders by this Tribunal, in the obtaining circumstances of the case.

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

34. In the light of the aforesaid reason, as there is no merit, therefore, the instant OA deserves to be and is hereby dismissed, as such. However, parties shall bear their own costs.

(DR. BIRENDRA KUMAR SINHA) (JUSTICE M.S. SULLAR)
MEMBER (A) MEMBER (J)

Rakesh