

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 2144/2012

New Delhi this the 21st day of March, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. K. N. Shrivastava, Member (A)

HC Amarjeet Singh, Age-48 years

PIS No.28826351

S/o Late Shri Ramvir Singh,

R/o V&PO-Bilsoori,

PS-Sikandrabad, Bulandshahar,

Uttar Pradesh.

.. Applicant

(Argued by: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police (DAP),
PHQ, I.P. Estate,
New Delhi.

2. The Spl. Commissioner of Police,
Delhi Armed Police
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.

3. The Addl. Commissioner
Vigilance,
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.

4. The Dy. Commissioner of Police,
Ist Bn. DAP,
Delhi.

..Respondents

(By Advocate: Mrs. Harvinder Oberoi)

ORDER(ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA) filed by the applicant, HC Amarjeet Singh, is to the impugned charge

sheet dated 20.09.2010 (Annexure A-4A), report of the Enquiry Officer (for brevity "EO") dated 02.09.2011 (Annexure A-3), impugned order dated 09.11.2011 (Annexure-A-I) by virtue of which a penalty of forfeiture of 5 years approved service permanently entailing proportionate reduction in his pay with immediate effect was imposed by the Disciplinary Authority. He has also assailed the impugned order dated 04.05.2012 (Annexure A-2) whereby his appeal was dismissed. At the same time, the punishment awarded to him was reduced to that of forfeiture of 2 years approved service temporarily entailing proportionate reduction in his pay for a period of one year by the Appellate Authority.

2. The sum and substance of the facts and material which needs to be essentially mentioned to decide the core controversy involved in the instant OA and emanating from the record is that the applicant was appointed in Delhi Police as a Constable in the year 1982. Thereafter, he was promoted to the rank of Head Constable (HC). The department claims that applicant, HC Rajesh Kumar and Constable (now HC) Pawan Kumar, were posted at Police Station, Geeta Colony at the relevant time when they demanded bribe from complainant Sanjay @ Sonu S/o Late Mam Chand Gupta to clear his character/service verification report, for a private

job. Accordingly, they were charge-sheeted in the following manner:-

“It is alleged against HC Amarjeet Singh, No. 562/E/(PIS No. 28826351), HC Rajesh Kumar, No. 81/E (PIS No. 28800533) and Ct. (now HC) Pawan Kumar, No. 1811/E (PIS No. 28012215) that while they were posted at PS Geeta Colony, they demanded bribe from Sh. Sanjay @ Sonu s/o Late Mam Chand Gupta r/o 5-B West Laxmi Market, Shastri Nagar, Delhi-31, to clear his service verification report for private job. HC Rajesh Kumar No. 81/E visited the residence and neighbourhood of Sh. Sanjay @ Sonu for verification and demanded Rs.500/- for clearing the verification report but did not pay the money. The HCs did not submit the enquiry report concerned in the police station. On enquiry by Sanjay @ Sonu. HC Rajesh Kumar told him that he had lost the documents/papers pertaining to his service verification report and hence, he could not submit the same. HC Amarjeet Singh, No. 562/E cleared his report after demanding and (sic) accepting a sum of Rs.50/- and Ct (now HC) Pawan Kumar No. 1811/E cleared his service verification report after demanding and accepting a sum of Rs.50/- as a bribe from Sh. Sanjay @ Sonu.

In this connection Sh Sanjay @ Sonu along with one Ashwani Singh came to the AC Branch on 20.01.2009 and made a complaint regarding demand of bribe by some officials of police station Geeta Colony. Sh. Sanjay @ Sonu prepared three CDs on the guidance of AC Branch and handed over the same to the Anti Corruption Branch with the prayer for an action in this regard.

On 17.03.2009, Sh. Sanjay @ Sonu along with Sh. Ashwani Kumar Singh came again in Anti Corruption Branch and gave a written complaint in which he alleged that HC Amarjeet Singh No. 562/E, HC Rakesh Kumar No. 81/E and Ct (now HC) Pawan Kumar No. 1811/E of PS Geeta Colony asked him to pay money to clear his service verification report for private job. The above said CDs were heard and it seems that HC Amarjeet Singh had demanded and accepted Rs.50/- and Ct (now HC) Pawan Kumar demanded and accepted Rs.50/- as bribe for clearing the above said verification report but his voice is not there in the recording. The voice of HC Amarjeet Singh and Ct (Now HC) Pawan Kumar were got identified by Insp. Niyam Pal Singh the then SHO/Geeta Colony who confirmed that the voice recorded by the complainant was their's. The transcription of the CDs was prepared.

The above act on the part of HC Amarjeet Singh No. 562/E, HC Rajesh Kumar, No. 81/E and Ct (now HC) Pawan Kumar, No. 1811/E amount to gross misconduct, lack of integrity

while discharging their official duties and their conduct is unbecoming of a police officer, which makes them liable to be dealt with departmentally under the provision of Delhi Police Punishment & Appeal) Rules 1980”.

3. However, the applicant and his co-delinquents did not admit the allegations and opted to face departmental enquiry. The EO recorded the statements of prosecution and defence witnesses. Thereafter, the delinquent officials submitted their defence statement. The EO, after taking into consideration the evidence and following the statutory procedure of enquiry, vide impugned enquiry report dated 02.09.2011 (Annexure-A3) came to the conclusion that charges against the applicant and HC Rajesh Kumar were proved whereas the charges against HC Pawan Kumar were not proved.

4. Accepting the report of the EO, the Disciplinary Authority and the Appellate Authority have passed orders imposing the above penalty on the applicant. A penalty of forfeiture of 3 years approved service permanently was awarded to HC Rajesh Kumar, whereas HC Pawan Kumar was exonerated from the charges vide the impugned order dated 09.11.2011 (Annexure A-I) passed by the Disciplinary Authority.

5. Sequelly, the joint appeal filed by HC Rajesh Kumar was accepted and his punishment order was set aside whereas the appeal filed by the applicant was dismissed. However, his punishment was reduced from forfeiture of 5

years approved service permanently to that of forfeiture of 2 years approved service and entailing proportionate reduction in his pay for a period of one year by means of impugned order dated 4.5.2012 (Annexure A-2) by the Appellate Authority.

6. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned charge sheet dated 20.09.2010 (Annexure A-4A), enquiry report dated 02.09.2011 (Annexure A-3), order dated 09.11.2011 (Annexure-A-I) passed by Disciplinary Authority and order dated 04.05.2012 (Annexure A-2) passed by the Appellate Authority, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The applicant, inter alia, claims that the enquiry is vitiated as he had made an application dated 03.05.2011 (Annexure A-7) to supply certain documents and CDs (on the basis of which the applicant was punished in the departmental enquiry) showing its relevance and in order to cross examine the prosecution witnesses, but the same were not supplied to him on the ground that copy of the CDs were not provided in the file, hence cannot be provided. It has caused a great deal of prejudice to his case. It has been alleged that enquiry was conducted in haste, and that too, without following the due procedure and without providing fair opportunity to the applicant to table his defence before the

EO. It is stated that the entire enquiry proceedings, the impugned orders of Disciplinary and Appellate authorities are illegal, arbitrary and without jurisdiction.

8. According to the applicant, on one hand the Disciplinary and Appellate Authorities have disbelieved the statement of complainant Sanjay @ Sonu while exonerating the co-delinquents HC Pawan Kumar and HC Rajesh Kumar respectively but on the other hand have placed reliance on his (complainant's) testimony while punishing the applicant and dismissing his (applicant's) appeal. It was alleged that the authorities have wrongly placed reliance on CD without establishing its legal validity. Even there was no cogent and reliable evidence regarding the demand and acceptance of bribe by the applicant, whereas there was clear evidence of demand and acceptance of bribe by HC Pawan Kumar and HC Rajesh Kumar who have been exonerated by the Disciplinary and Appellate Authorities respectively. It has been pleaded that, it is a case of no evidence against the applicant and the impugned orders are based on inadmissible evidence.

9. Levelling a variety of allegations and narrating the sequence of events in detail, the applicant claims that the impugned disciplinary proceedings and orders are illegal, arbitrary and against the statutory provisions and without jurisdiction. On the strength of aforesaid grounds, the

applicant has sought quashing of the impugned proceedings and orders in the manner indicated hereinabove.

10. The contesting respondents refuted the allegations of the applicant and filed the reply, wherein it has been pleaded that a joint departmental enquiry was initiated against HC Amarjeet Singh, HC Rajesh Kumar and HC Pawan Kumar under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as “relevant rules”). They were charged on the ground that they demanded bribe from complainant Sanjay @ Sonu to clear his service verification for private job while they were posted at Police Station, Geeta Colony. HC Rajesh Kumar visited the residence of complainant Sanjay @ Sonu and his neighbours for verification and demanded Rs.500 for clearing the verification report. Sanjay did not pay the money and as such Head Constables did not submit the report to the Police Station. On enquiry by Sanjay @ Sonu, HC Rajesh Kumar told that he had lost the documents and papers and he could not submit the service verification report. It was alleged that the applicant and Constable Pawan Kumar cleared the report after demanding and accepting a sum of Rs.50/- each. In this connection, complainant Sanjay @ Sonu along with one Ashwani Kumar went to the Anti Corruption Branch (in short “AC Branch”) on 20.01.2009 and made complaint regarding the demand of bribe by some officials of Police Station, Geeta

Colony. Shri Sanjay @ Sonu was stated to have prepared the CDs at the instance of AC Branch and handed over the same to them.

11. The case of the contesting respondents further proceeds that on 17.03.2009, the complainant again went to the AC Branch and gave a written complaint levelling allegation of bribe against all the above mentioned three constables. Accordingly, they were charge sheeted and an EO was appointed. After following due procedure and recording the evidence, the EO submitted his report on the basis of which, the Disciplinary Authority rightly awarded the pointed punishment. The appeal filed by the applicant was termed to be rightly dismissed.

12. In all, the contesting respondents claimed that the applicant was rightly punished after taking into consideration the totality of facts, circumstances and evidence on record by the Disciplinary and Appellate Authority. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations pleaded in the main OA and prayed for its dismissal.

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

14. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter deeply, we are of the view that the instant OA deserves to be allowed for the reasons mentioned herein below.

15. As is evident from the record that the applicant, HC Rajesh Kumar and Constable Pawan Kumar were jointly charge-sheeted for demanding bribe from complainant Sanjay @ Sonu for clearing his verification report. The prosecution had examined 7 witnesses. The delinquent officials had also produced 7 witnesses in their defence. According to the allegations contained in the charge, HC Amarjeet Singh, HC Rajesh Kumar and HC Pawan Kumar demanded bribe from PW-7 to clear his service verification report for a private job. There are specific allegations against HC Rajesh Kumar that he visited the residence of complainant Sanjay @ Sonu and his neighbourhood for verification and demanded Rs.500/- for clearing the verification report. The complainant has not paid money to him (HC Rajesh Kumar), hence he did not submit the enquiry report to the Police Station.

16. However, in the wake of enquiry by PW-7, , HC Rajesh Kumar told him that he had lost the documents/papers and hence, he could not submit the verification report. According to the contesting respondents, subsequently

applicant and HC Pawan Kumar cleared service verification report of the complainant after demanding and accepting a bribe of Rs.50/- each. The complainant was stated to have prepared a CD of the incident at the instance of AC Branch, and handed over to the AC Branch. The voices of all the delinquent officials were claimed to have been verified by PW-5, Inspector Niyam Pal Singh, the then SHO, Geeta Colony. That means the statement of complainant PW-7 Sanjay @ Sonu and PW-5, Inspector Niyam Pal Singh are most important piece of evidence to decide the real controversy between the parties.

17. During the course of enquiry, PW-7, stated that he had applied for a private job for which police verification was needed. He got prepared a demand draft of Rs.500/- and applied to DCP (East) District for police verification. Thereafter, HC Rajesh Kumar came to his house and demanded a bribe of Rs.500/- for verification. On denial, he went away. About 5-6 days thereafter, HC Amarjeet Singh came to his house for verification and called him to the Police Station. He enquired about the verification and demanded Rs.100/- from him. Some other person accompanying him who was sitting on the ground floor, directed him to pay Rs. 50/-. He went there and gave Rs.50/- to a policeman who was sitting there in civil dress (not the applicant) but that person is not out of three

persons present here. Later on, he came to know from DCP's office that he will be informed after verification. Matter regarding demand of money inside the Police Station was recorded in mobile phone by him and he had prepared 3 CDs of the said recording. He has seen the CDs (exhibit PW-7/A) on file. On 17.03.2009, he went to AC Branch and met DCP and submitted a complaint (Exhibit PW-3/B) and CDs. CDs were played on computer there and voice was listened. **PW-7 has categorically maintained that HC Rajesh Kumar had demanded Rs.500/- from him and he had given it to him.**

That means, the allegation of demand and acceptance of Rs.500/- are assigned to the main accused HC Rajesh Kumar who has since been exonerated by the Appellate Authority.

18. Likewise, next to note is the testimony of PW-5, Inspector, Niyam Pal Singh who has stated that on 08.04.2009 he was posted as SHO/PS Geeta Colony. On receipt of telephonic information, he went to AC Branch and met Inspector Naresh Kumar who intimated him that he has a CD in which voices of 3 Head Constables, namely, Amarjeet Singh, Rajesh Kumar and Pawan Kumar are recorded and he has been called to identify the voice. He played the CD on computer and he was asked to identify the voices after disclosing their names. PW-5 has stated that the voices perhaps resemble with those of the delinquents. In

other words, PW-5 was not sure very that the voices in the CDs were those of the three charged Head Constables (including the applicant). According to PW-7, he prepared the CD but in cross-examination he admitted that CD was prepared by some shopkeeper.

19. Thus, it would be seen that the department has pressed into service the CD purported to have been prepared and recorded by some shopkeeper as acknowledged by PW-7 in his cross-examination. Section 65-B of the Indian Evidence Act, 1872 postulates that any information contained in an electronic record which is printed on a paper, stored, recorded or copies in optical or magnetic media produced by a computer, shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated **therein of which direct evidence would be admissible.**

20. Likewise, PW-7 has categorically admitted in his cross-examination that CD was prepared through a shopkeeper and a damaged chip was fitted in the mobile phone to get rid of any interruption. Actual date of preparation of the CD is not in his memory. CDs were heard but its transcription was not prepared before him. It is not a matter of dispute that

neither the date, time nor name of the shopkeeper who prepared the CD are forthcoming on record nor the shopkeeper was examined in the enquiry proceedings. The actual date of demand of bribe by HCs is not mentioned in the statement of PW-7. He reported the matter to the AC Branch on 20.01.2009, whereas he submitted written complaint on 17.03.2009 and went to DCP on 08.04.2009. Thus, there is inherent delay, which renders the version of the department doubtful.

21. This is not the end of the matter. Neither the samples of voice of the three Constables were taken nor any expert was engaged to verify their voices. In this manner, the department has withheld the best possible evidence for the reason best known to it and an adverse inference against the respondents is inevitable in this regard.

22. Similarly, PW-5, Inspector, Niyam Pal Singh, SHO has admitted that he is not an expert in identifying the voice and also he has not taken any training about it. He may be confused after verifying voice on CD after a long gap.

23. Meaning thereby, the information contained in the CD is only admissible if there is a direct evidence of contents of the original and after compliance of all conditions contemplated in Section 65-B (1) to (5) and not otherwise. This matter is no more res integra and is now well settled.

24. An identical question came to be decided by Hon'ble Apex Court in case ***Ram Singh and Others Vs. Col. Ram Singh AIR 1986 SC 3*** wherein it was held as under:-

“32. Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

- 1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.
- 2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.
- 3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
- 4) The statement must be relevant according to the rules of Evidence Act.
- 5) The recorded cassette must be carefully sealed and kept in safe or official custody”.
- 6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances”.

25. Again, it was held by Hon'ble Supreme Court in case ***Anvar P.V. Vs. P.K. Basheer and Others 2014 (10) SCC 473*** that electronic record produced for the inspection of the court is documentary evidence under Section 3 of The Indian

Evidence Act, 1872. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B of the Evidence Act. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2) which, in substance, are as under:-

- “(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity”.

26. Therefore, mere production of CD prepared by some shopkeeper, who was not examined in the enquiry proceedings, and similarly non-production of an expert to verify the voice sample and non-proving the CD in accordance with the established principle of law were meaningless and fatal to the case of the respondents. Hence, if the indicated vague

evidence and CD is excluded from consideration, then it becomes a case of no evidence. Indeed, the Disciplinary and Appellate Authority have wrongly placed reliance on such type of inadmissible evidence as regards the punishment imposed on the present applicant is concerned, particularly when the same very evidence was disbelieved and discarded by them while exonerating the other co-delinquents; namely HC Pawan Kumar and HC Rajesh Kumar for the reasons best known to them.

27. The matter did not rest there. The case of the applicant from the very beginning is that although he has moved an application (Annexure A-7) to the EO to supply the copy of CD to enable him to effectively cross-examine the witnesses but the EO has recorded a note on it that copy of CD is not supplied with the file hence cannot be provided. Therefore, if the CD was not a part of enquiry file and copy of which was not supplied to the applicant, it appears very strange as to how and in what manner the Disciplinary and Appellate Authorities have placed reliance on such documents (CD). In this manner, the applicant was denied the right to defend himself because a copy of the CD was essential for him to effectively cross-examine the witnesses. Thus, the enquiry proceedings are vitiated in view of the law laid down by Hon'ble High Court of Delhi in case of **Jug Raj Singh**

Vs. The Delhi Administration, Delhi and Others 1970***SLR (Delhi) 400.***

28. There is yet another aspect of the matter which can be viewed entirely from a different angle. As indicated hereinabove, the main allegations of specific demand and acceptance of a bribe of Rs.500/- are assigned to the main Charged Official HC Rajesh Kumar by the complainant Sanjay @ Sonu (PW-7). PW-7 has categorically maintained that he gave Rs.50/- not to HC Amarjeet Singh but to a policeman who was sitting there in civil dress. There is not an iota of cogent evidence on record even to suggest remotely that the applicant Amarjeet Singh had actually accepted the bribe of Rs.50/-. Based on EO's report, the Disciplinary Authority has exonerated HC Pawan Kumar, whereas the main accused HC Rajesh Kumar, against whom there are specific allegations of, demand & acceptance of a bribe of Rs.500/- and active participation, was exonerated by the Appellate Authority. Strange enough the applicant was held guilty and punished on the same very discarded evidence by the authorities.

29. Therefore, in this view of the factual backdrop, we are of the considered view that respondents cannot legally be permitted to resort to selective/differential treatment to the applicant different than those granted to similarly situated HC Rajesh Kumar and HC Pawan Kumar under the same set of

circumstances and evidence. Thus, the departmental proceedings and impugned orders cannot legally be sustained on the principle of parity. This matter is no more *res integra* and is now well settled.

30. An identical point came to be decided by Hon'ble Apex Court in case of ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481***. Having considered the scope of Article 14 of the Constitution, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

31. Not only that, the Hon'ble Supreme Court again considered the principle of parity in awarding the penalty in departmental proceedings in case of ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120***, wherein it was held as under:-

“11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun

Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. **In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.**

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all

consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

32. Therefore, the protection under Articles 14 and 16 of the Constitution of India and principles of equaity/parity and *stare decisis* are fully attracted to the case of the applicant as well and the epitome of indicated law laid down by the Hon'ble Apex Court is *mutatis mutandis* applicable to the facts of the present case and is complete answer to the problem in hand. Thus, the impugned orders deserve to be and are quashed 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 aforesaid reasons, the instant OA is allowed. The impugned charge sheet dated 20.09.2010 (Annexure A4-A), report of the Enquiry Officer dated 02.09.2011 (Annexure A-3), impugned order dated 09.11.2011 (Annexure A-1) passed by the Disciplinary Authority and order dated 04.05.2012 (Annexure A-2) of Appellate Authority are hereby set aside. The applicant is exonerated of all the charges framed against him. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh