

**Central Administrative Tribunal
Principal Bench**

**OA No.2895/2013
With
OA No.3072/2013**

Order pronounced on : 16.09.2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

I - OA No.2895/2013

Ct. Adesh Kumar,
(Now Belt no.1615/DAP),
PIS No.28910381,
S/o Late Shri DharambirTyagi,
R/o S-94, School Block,
Shakarpur,
Delhi-92.

...Applicant

(By Advocate : Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
2. Additional Commissioner of Police,
PCR, Delhi
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
3. Deputy Commissioner of Police,
FRRO, New Delhi,
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
4. Special Commissioner of Police
(Vigilance),
Through Commissioner of Police,
Police Head Quarters, IP Estate,

MSO Building, New Delhi.

5. Additional Commissioner of Police,
(Vigilance)
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.

...Respondents

(By Advocate : Shri VijayPandita)

II – OA No.3072/2013

Constable Gurvinder Singh,
PIS No.28980097,
S/o Shri Chet Ram,
R/o Q.No.B-9/68,
Type IInd PitamPura Police Colony,
New Delhi-34.

...Applicant

(By Advocate : Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
2. Additional Commissioner of Police,
PCR, Delhi
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
3. Deputy Commissioner of Police,
FRRO, New Delhi,
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
4. Special Commissioner of Police
(Vigilance),
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.

5. Additional Commissioner of Police,
(Vigilance)
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.

...Respondents

(By Advocate : Shri Vijay Pandita)

ORDER

Mr. V.N. Gaur, Member (A)

The present OA Nos.2895/2013 and 3072/2013 have been filed challenging the orders passed by the respondents awarding major punishments on the applicants following a joint enquiry. At the request of the learned counsel for applicant in both the cases, the two cases were heard together as the issues involved are common. The OA No.2895/2013 was taken up as the lead case.

2. The prayer made in these OAs is to quash (i) order dated 28.06.2011 ordering a joint departmental enquiry against the applicants, (ii) finding of the Joint Enquiry dated 03.02.2012 to the limited extent whereby the charge of carrying and using mobile phone on duty has been found to be established against both the applicants; and the charge of misbehaviour with Shri S.N. Sharma by the applicant in OA No.3072/2013 established without considering the mitigating circumstances, (iii) the final order dated 22.03.2012 imposing major punishment of withholding of next increment for a period of one year permanently on the applicant in

OA No.2895/2013 and withholding of next increment for a period of three years permanently on the applicant in OA No.3072/2013, (iv) Order dated 21.05.2013 passed by the Appellate Authority confirming the punishment imposed on the applicants, (v) the order dated 06.06.2011 placing the applicants under suspension, (vi) order dated 25.06.2012 whereby the names of the applicants were brought in the Secret List of doubtful integrity for three years w.e.f. 22.03.2012; and (vii) the Order dated 09.01.2013 rejecting the representation of the applicants against the order dated 25.06.2012.

3. The allegations against the applicant, as narrated in the order dated 28.06.2011, are reproduced below :-

ORDER

On the night of 06.06.2011 at about 0300 hrs, one pax namely Thajudeen Rizvi S/O Thajudeen R/O Chennai, holding an Indian passport No.G-4570422, issued at Chennai on 20.08.2007 approached the counter of W/SI MaltiBana, C.O., working in departure wing at counter No.27 and sought departure for Frankfurt (Germany) by flight No.EK-513 on the strength of a valid Schenegan VISA. On scrutiny of the above PP, the C.O. W/SI MaltiBana found that a forged/chemically washed Indonesian VISA was pasted on page No.19 of the passport which was removed from page No.12 and a stamp was hidden under the VISA, and the passport was also restitched as clearly visible from disturbed centre page stitching. On questioning, the pax revealed that he had paid Rs.5 lac (3 lac in advance) to one Kumar, a Chennai based agent for arranging his VISA and journey.

While the Rukka was being prepared for registration of a case, the pax was called upon by Shri G.N. Jha, AFRRO/Shift-B in his office room to know about the modus operandi and he voluntarily revealed that he had received a call from mobile No.9840432925 to report to only at counter No.26 which was manned by Ct. (Exe.) Adesh Kumar, No.266/F for facilitation. The translation of the written deposition of complainant done

by ACIO-II D. Manickam who could understand the script (Tamil) also ascertains the aforesaid version of the complainant. Whereas the complainant paxThajudeenRizwi was about to approach to the Immigration counter No.26, he found himself being called on by W/SI MaltiBana who was detailed at adjacent counter No.27. Ct. (Exe.) Adesh Kumar, No.266/F was called upon by Shri G.N. Jha, AFRRO/Shift-B in the presence of pax and questioned about the veracity of the information. He revealed that he received a call from Ct. (Exe.) Gurvinder Singh, No.293/F who was deployed in the arrival wing about immigration clearance of the pax in question. In the CCTV footage pax was seen talking on his mobile phone in front of Counter No.26 and finally he approached towards Counter No.26.”

4. Learned counsel for the applicant challenged the impugned orders on the following grounds :-

- (a) There was no evidence to prove any misconduct on the part of the applicant.
- (b) The respondents did not appreciate that there were mitigating circumstances i.e. the sickness of the wife of the applicant, which necessitated him to carry his mobile phone while performing duty at Counter No.26 at Immigration Departure Wing. He had also made an entry in the duty roster with regard to possession of the mobile phone.
- (c) There was no instruction issued by the Senior Officers which stipulate that keeping mobile phone while performing duty will attract penalty. The applicant was not provided with a copy of such instructions during the departmental enquiry. The Disciplinary Authority punished the applicant for a

charge, which was not even alleged against him. He relied on ***M.V. Bijlani Vs. Union of India***, AIR 2006 SC 3475.

(d) Even if there was such an instruction, the same would be directory in nature, meaning that the violation of such instruction did not constitute a misconduct.

(e) Most of the staff performing duty on the same date i.e. 06.06.2011 were carrying mobile phone but no action was taken against them.

(f) The Disciplinary Authority did not give any opportunity to the applicant to represent before deciding the period of his suspension.

(g) The name of the applicant has been brought in the Secret List of doubtful integrity for a period of three years starting from 22.03.2012 which is in violation of the Standing Order No.265.

5. The learned counsel further emphasises that the report of the Enquiry Officer clearly stipulated that the allegation of assisting illegal immigration against the applicant was without any basis. The officer manning counter No.27, who detected the passenger with fake passport, did not say that the passenger mentioned the name of the applicant in his statement. He further referred to the Clause 5 of the Standing Order No.265 of 2009, a copy of which has

been enclosed as Annexure-12 to the OA, which indicates the categories of officers whose names can be included in the secret list of doubtful integrity. According to the learned counsel for applicant, the case of the applicant does not fall in any one of these categories. On the contrary, the Clause 6, providing for exceptions, clearly states that the names of officers in the indicated categories should not be included in the secret list and considering the stipulations in that clause, the applicant's name cannot be brought on the secret list. In this connection he relied on the judgment of this Tribunal in OA No.2056/2008 – **Constable Kanwal Jeet Kaur Vs. Govt. of NCT of Delhi & Ors.**

6. In the rejoinder to the counter reply filed by the respondents on 23.10.2013, the learned counsel stated that in para 5.6 of the counter, the respondents have made a reference to the CCTV footage that allegedly confirmed the involvement of applicant and is his co-delinquent. Such reference in the counter when no material was supplied to the applicants during the inquiry amounted to supplementing the impugned order through the counter reply which cannot be done in the wake of Hon'ble Apex Court's judgment in the case of ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and Ors.***, (1978) SCC 405. The applicant has submitted a copy of the deployment chart of Immigration Officers (shift-'B') on night of 06.06.2011 indicating

that there were more than ten other Immigration Officers who had declared that they were carrying mobile phones. Thus, to single out the applicant as guilty of possessing of mobile phone on duty and imposing major punishment for the same was clear discrimination.

7. The learned counsel for respondents submitted that the charges against the applicants in the OAs were quite serious though ultimately in the Departmental Enquiry, the charge of assisting the passenger to immigrate on the basis of a fake passport could not be proved. However, the fact of the possession of mobile phone by both the applicants and being in touch with each other has to be seen in this perspective. The learned counsel refuted the contention of the applicant that there was no written instructions regarding possession and use of mobile phone while on duty and that the applicant was not made aware of such instructions. According to the learned counsel, officers put on immigration duty have to undergo a training in which they are given extensive briefing about their conduct and duties as Immigration Officer. Further, the applicant was provided the copy of the order dated 14.06.2011 which contained instructions earlier circulated vide Circular dated 21.04.2009. He further stated that the Enquiry Officer had gone into great detail and, strictly on the basis of available evidence, had come to a conclusion that the first charge relating to the facilitation of the passenger in an illegal manner was

not proved and only the second charge of use of possessing and using of mobile phone in unauthorised manner was proved. The applicant cannot, therefore, allege that the Enquiry Officer had not taken into account the mitigating circumstances or the evidence available on record. He rebutted the argument that the Disciplinary Authority had punished the applicant for a charge which was not alleged against him, by referring to the order dated 28.6.2011, which stated that "Thus, both Ct.(Exe.) Adesh Kumar, No.226/F and Ct.(Exe.) Gurvinder Singh, No.293/F have shown *gross indiscipline by keeping the mobile phones in their possession in violation of orders of senior officers* and made a number of phone calls in order to facilitate immigration clearance to the pax on the counterfeit documents (re-stitched) for Germany. A criminal case stands registered against the pax vide FIR No.266/2011 u/s 420/468/471 IPC & 12 PP Act PS IGI Airport, New Delhi". The respondents have also filed a copy of the Show Cause Notice dated 10.02.2012 issued to both the applicants regarding the treatment of the punishment period from 06.06.2011 to 24.08.2011 and 06.06.2011 to 21.09.2011 respectively, as period 'Not spent on duty'.

8. The respondents have relied on the judgments of Hon'ble Apex Court in the cases of **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749, **Union of India Vs. Sardar Bahadur**, (1972) 4 SCC 618, **Union of India Vs. A. Nagamalleshwara Rao**, AIR 1998 SC 111,

Union of India Vs. Parma Nanda, AIR 1989 SC 1185, ***State of Tamil Nadu Vs. K.V. Perumal*** (1996) 5 SCC 474, ***State of Tamil Nadu Vs. Subramanyan*** (1996) 7 SCC 509 and ***State Bank of India Vs. S.K. Endow*** (1994) 2 SCC 537, to emphasis that the scope of judicial review was limited in the matter of the departmental proceedings, that the standard of proof required in a departmental proceeding was of preponderance of probability and not a proof beyond reasonable doubt; that the Conduct Rules and procedures do not apply to a departmental enquiry; and that the Courts/Tribunals are precluded from re-appreciating the evidence and they cannot sit as an appellate forum to re-appreciate the evidence and come to its own conclusion.

9. We have heard the learned counsels for the parties and perused the record. We agree at the outset with the submission of the respondents regarding the limitation on the scope of judicial scrutiny in a departmental proceeding. In ***Union of India Vs. Sardar Bahadur*** (supra), the Hon'ble Supreme Court held that :-

“...if there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion of the authority that the officer is guilty, it is not -the function of the High Court in exercise of its powers under Art. 226 to review the materials and arrive at its own conclusion. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. In this case also the Supreme Court held that if the order of the punishing authority can be supported on any findings as to substantial misdemeanour for which the particular punishment can be imposed, it is not for the Court to consider whether

the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed was just and proper, provided it is justified by the ruled and is considered to be appropriate having regard to the misdemeanour established. Unless the Court finds that the punishment inflicted is shocking to Court's conscience, Court does not want to interfere."

10. In the ***State of West Bengal Vs. Anil Kumar Shaw***, AIR 1990 SC 2205, it was held that in a quasi-judicial proceeding, Courts/Tribunals would be slow to interfere with findings of facts unless such findings are based on no evidence or beset with surmises or conjectures.

11. In ***Union of India v Manab Kumar*** (supra), the Hon'ble Supreme Court observed thus:

"It is well settled that the High Court while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence. It interferes with the finding of the enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order of the learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review."

12. In ***Govt. of Tamil Nadu Vs. A. Rajapandian***, 1995 SCC (L&S) 292, Hon'ble Supreme Court ruled that Tribunal had re-appreciated the evidence and come to its own conclusion that there were no sufficient material to find the employee guilty of misconduct and that the Tribunal fell into patent error and acted

wholly beyond its jurisdiction as an Appellate forum which it was not.

13. In **B.C. Chaturvedi** (*supra*), the Three Judge Bench of Hon'ble Apex Court held that the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. Powers of judicial review is exercised to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

14. In **Ranjit Thakur Vs. Union of India**, (1987) 4 SCC 611, the Hon'ble Supreme Court held that :

“There, the Court laid stress on irrationality and perversity of the decision and said they are the recognised grounds for judicial review. The Apex Court noticed three heads or grounds on which administrative action is subject to control by judicial review. They are “illegality”, “irrationality” and “procedural impropriety”. To these, the Court agreed that the fourth potential ground is “proportionality”. The fact that the principles of “proportionality” is already a recognised ground can be seen from the Supreme Court’s interference in matters of imposition of penalties. However, such interference is sparingly made.”

15. Keeping the above pronouncements of the Hon'ble Apex Court in perspective, we now proceed to examine the grounds taken by the applicant. In the departmental inquiry only the charge of possessing the mobile phone talking to the co-delinquent has been proved against the applicant. The applicant has raised the following

contentions that could have, according to him, changed the outcome of the enquiry:

- (i) He was not provided with any instruction issued by the Senior Officers which stipulate that keeping mobile phone while performing duty will attract penalty, for violation of which the applicant was punished.
- (ii) The violation of the Circular dated 14.06.2011 issued after the alleged incident on 06.06.2011 could not have been taken as a misconduct to be visited by penalty.
- (iii) The Disciplinary Authority punished the applicant for a charge which was not alleged against him.
- (iv) No evidence.

16. With regard to the instruction that prohibited the use of mobile phone while on duty, it is noticed that the applicant himself has referred in para 5.7 of the OA about the 'Do's and Don'ts' circulars for Immigration Officer dated 14.06.2011 and 21.04.2009. In addition, it is not disputed that the applicants had undergone training meant for the Immigration Officers where they were briefed about their duties as well as such do's and don'ts . The applicants, therefore, cannot take a plea that they were not aware of the instructions regarding use of mobile phone on duty. Further, any instruction given to the employees by a superior officer, in the interest of good governance, discipline and maintaining integrity in

the system, unless the same is contrary to the law of the land, has to be followed, especially in an organisation whose efficient functioning, or otherwise, can have implications for the national security. It is not the case of the applicants that the instructions contained in the circulars dated 14.06.2011 and 21.04.2009 in respect of keeping personal mobile phone while on duty, are in violation of any statute or not in the interest of public service. Considering the sensitivity of the immigration work, a restriction on use of mobile phones while on duty cannot be faulted with. The violation of the aforesaid instructions, therefore, has been rightly treated by the respondents as a misconduct.

17. The applicant has alleged that he has been punished for an offence which was not alleged against him. We find this contention to be without any substance because the relevant portion of the order dated 28.06.2011 issued by respondent No.3, reproduced in the preceding para 2, shows that the two applicants had been charged of having shown gross negligence by keeping the mobile phone in their possession in violation of the orders of their seniors and made a number of phone calls in order to facilitate immigration clearance to the passenger on the counterfeit documents. The second part of the allegation, however, was not proved during the Departmental Enquiry. Besides the above, we do not find any ground that would challenge the departmental proceedings on

account of having denied the applicant a reasonable opportunity of defence. The recovery of phone from the applicant while on duty is an admitted fact and therefore the finding of the Enquiry officer can not be termed as a case of no evidence. It is relevant to recall the Honble Apex Court in **B. C. Chaturvedi** “the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made”. We, therefore, do not find any reason to interfere with the departmental proceedings or the punishment awarded by the respondents.

18. The applicants’ name has been put in the secret list of doubtful integrity w.e.f. 22.03.2012 vide order dated 25.06.2012 for a period of three years. According to the applicants, there is no provision in the Standing Order No.265/2009 giving powers to the respondents to place the applicants’ name on the Secret List of Doubtful Integrity in the given circumstances. The relevant portion of the Standing Order No.265 of 2009 is reproduced below :-

“5. **SECRET LIST OF DOUBTFUL INTEGRITY (D.I)**

It will include the names of officers falling under one or more of the following categories :

- i) Officials who are convicted by a Court of law on the charge of lack of integrity, or for an offence involving moral turpitude, but due to exceptional circumstances, a penalty, other than that of dismissal, removal or compulsory retirement, is imposed upon them.
- ii) Officials who are awarded a major penalty upon conclusion of departmental enquiry proceedings in one of the following cases :
 - a) On charges of lack of integrity

- b) On charges of gross dereliction of duty in protecting the interest of the Government, although the corrupt motive may not be capable of proof.
- iii) Officials who are arrested in a case under the P.O.C. Act.
- iv) Officials against whom proceedings for a major penalty or a court trial are in progress for alleged acts involving specific charges of lack of integrity and moral turpitude.

In non-specific cases the names may initially be brought on Agreed List and transferred to Secret List on award of major penalty / conviction as the case may be.

- v) Officials who were prosecuted in a criminal case but are acquitted on technical grounds, though on the basis of evidence led in the trial a reasonable suspicion against their integrity is raised, or who were dealt with departmentally but exonerated on technical grounds or by winning over the witness.
- vi) Officials who are awarded a minor penalty on charges involving specific charges of “lack of integrity”, “moral turpitude” and “corruption” pursuant to major penalty proceedings in which the charge involving lack of integrity/ moral turpitude has been proved. It is advisable and more appropriate to make a specific allegation/ charge of ‘lack of integrity’ in the case of ‘corruption’.

6. EXCEPTIONS :

The names of officers/ men of the following category, shall not be included in the Secret List:

- a) Officers who have been exonerated or acquitted honourably at the conclusion of disciplinary proceedings or court trial.
- b) Officers against whom an enquiry or investigation has not brought forth sufficient evidence for recommending even departmental proceedings or court trial.
- c) Officers who have been convicted of offences not involving lack of integrity or moral turpitude.
- d) Officers against whom disciplinary proceedings have been completed, or are in progress, in respect of administrative lapses, minor violation of conduct rules and acts of indiscipline.
- e) The name of police officers should not be brought on the Secret List of D.I for mere negligence or lack of supervision or for allegations of non registrations or delayed registration of cases.
- f) The name of police officers should not be brought on Secret List of D.I for mere violation of instructions, if there is no malafide act involved.
- g) Name of police officers against whom criminal cases are registered in their private capacity involving their private affairs (for example disputes and quarrels over property,

disputes with neighbour and martial disputes) shall not be brought on the Secret List of D.I.”

19. One of the provisions contained in this Standing Order relates to the officials who are awarded a major penalty upon conclusion of departmental enquiry proceedings on charges of lack of integrity. The charge against the applicant was that he (Constable Adesh Kumar) received a call from the co-delinquent (Constable Gurvinder Singh), who was deployed in the Arrival Wing, for immigration clearance of the passenger who was travelling on a forged passport. The charge against the two applicants is quite serious though the same could not be proved in the departmental enquiry. A criminal case is pending against the applicant in FIR no.266/2011 u/s 420/468/471 IPC and 12 PP Act which will take considerable time to conclude. It is also noted that the facts as presented by the applicants indicate too many ‘coincidences’ on the night of 06.06.2011, the day on which alleged incidence happened. The applicant Constable Adesh Kumar carries a mobile phone but failed to take permission of the competent authority, and there is nothing on record to show that he called his sick wife, which was the reason for him to carry the mobile phone with him. Several calls are exchanged between constable Adesh Kumar and Constable Gurvinder Singh talking only about tea and food. The Constable Gurvinder Singh falls sick and returns to his station after visiting the Medanta facility at the Airport. Constable Gurvinder Singh gets

so agitated with the talk of tea and food with Constable Adesh Kumar on phone that he throws away his mobile in a rage in which only the second sim of the mobile gets lost, apparently with no damage to the mobile phone and first sim.

20. In the above background, the seriousness of charge, including those mentioned in the FIR, even though only part of it was proved in the departmental proceedings, will indicate a strong reason for the authorities to exercise caution in respect of these officials. We are, therefore, of the view that the Clause 5 (ii) (a) would apply in this case even though the departmental enquiry could establish the allegation only partly. On the issue of inclusion of name in the Secret List we have considered OA-2056/2008 cited by the applicant and found that the facts of the case were entirely different in that OA. The applicant therein was accused of dereliction of duty as an under trial prisoner (UTP) had escaped from custody while the UTP was taken to the hospital. The disciplinary authority imposed penalty under Delhi Police (Punishment & Appeal) Rules, 1980 and her name was also brought on the secret list. This Tribunal had taken a view in its order dated 22.02.2010 that there is a clear distinction between an act merely of gross negligence and dereliction of duty and an act of dereliction of duty, which is based on corrupt motive. There should be some foundation to prove that accused has been derelict in the performance of her duty as expected from her. The integrity of the applicant had not even

remotely been questioned. The Tribunal, therefore, quashed the order placing the name of the applicant in the secret list of doubtful integrity. In the present OA, the charge levelled against the applicant is quite serious and part of the charge of possessing the mobile phone and talking to co-delinquent has been proved. The applicants cannot justify a similar treatment as the applicant in the aforementioned OA, i.e., OA-2056/2008. **M.V.Bijlani's** case is also not relevant in the present OA as we have already seen that the punishment imposed on the applicants cannot be said to be on account of a charge that has not been levelled against him. The applicant had also contended that he was not the only one who had carried mobile phone with him while on duty on that night and relied on **Mohinder Singh Gill's** case. We accept the contention that the respondents cannot bring additional facts in the rejoinder to support the case against the applicant when the same has not been brought out during the enquiry. In the rejoinder, the respondents have made a reference to the CCTV footage which showed that the applicants were talking on mobile phone. It has been stated that the CCTV did not show that other persons who had carried mobile phone were talking on mobile phone while on duty. Even if we do not take cognizance of this contention of the respondents, the fact remains that the applicant cannot claim the benefit of a negative parity in the matter of disciplinary action. In what circumstances, the other colleagues of the applicants carried

mobile phone and whether they had appropriate permission or not and why the respondents did not take action against them are not questions that can strengthen the case of the applicant.

21. In respect of the applicant (Constable Gurvinder Singh) in OA No.3072/2013, there is additional charge that he misbehaved with his superior officers who marked the applicant absent when he claimed to have gone for taking water. During the ensuing arguments he is alleged to have used abusive language against the superior officer. In the departmental enquiry, this allegation was proved against the applicant Constable Gurvinder Singh and accordingly, the penalty imposed upon him is that of withholding of next increment for a period of three years permanently. The applicant has not alleged any procedural deviation in the enquiry or denial of fair opportunity to him to defend himself in respect of this charge. His only plea is that Shri S.N. Sharma, AFRRO and Shri Ajay Kumar (ACIO-I), belonging to the same department, acted in cahoots and levelled false allegations against the applicant. The applicant has, however, not been able to establish this allegation in the OA. In the enquiry report also, there is nothing to support these allegations. The para 5 of the report of the Enquiry Officer is reproduced below:

“5. That during the course of D.E. proceeding as many as 11 PWs were examined PW-1 Sh. Shoorvir Singh PW-2 Rajesh Kumar HC. PW-3 W/SI Malti Bane PW-5 Sh. Dinesh Kumar PW-7 SI Jagtar Singh, PW-8 D.Manickam PW-9 Sh. S.N.Sharma and PW-10 Sh. Abhey Singh did not utter a single word against them in respect of conspiracy to clear the pax

T.Rizvi, with ulterior motive. PW-4 Sh. S.N.Sharma, PW-6 Sh. G.N.Jha and PW-11 Sh. Ajay Kumar in tandem with each other made cock and bull story which is all moonshine to spoil their young carriers.”

22. We, therefore, do not find any reason to interfere with the findings of the Inquiry Officer or any of the further action taken by the respondents against Const. Gurvinder Singh.

23. Considering the above background and for the reasons stated in the preceding paras, we do not find any merit in two OAs, i.e., 2895/2013 and 3072/2013 and the same are dismissed. Before parting with the case it is noted that the order placing the name of the applicants in the secret list was passed on 25.06.2012 effective from 22.03.2012 for a period of three years. This period has already expired and it is not known whether name of the applicants continue to figure in the secret list or not. It is, therefore, further directed that the respondents will carry out a fresh review in respect of the applicants in the event their names have been put again on the secret list, after taking into account their conduct since the year 2012 and pass appropriate orders. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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