CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4127 OF 2013
New Delhi, this the 24th day of March, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Atma Ram,
Ex.Const.No.1223/SW/1483/SW (PIS No.28940669),
S/o late Shri Tulsi Ram,
r/oH.No.75, Village Malikpur,
P.S.Mukherji Nagar, Delhi 110009,
Permanent address: V&PO:Selco,
Distt. Parbhani, Maharashtra é é é é . Applicant

(By Advocate: Mr.K.K.Kaushik)

Vs.

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
M.S.O.Building, P.H.Q., I.P.Estate,
New Delhi 110002.

2. Addl.Dy.Commissioner of Police,
South-West Distt. New Delhi,
Through Commissioner of Police,
M.S.O.Building, PHQ,I.P.Estate,
New Delhi 110002

3. Joint Commissioner of Police,
South Western Range, through Commissioner of Police,
M.S.O.Building, PHQ, I.P.Estate,
New Delhi 110002 é é é é Respondents

(By Advocate: Ms.Sangita Rai)

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ORDER

***Per* Raj Vir Sharma, Member(J):**

We have perused the records, and have heard Mr.K.K.Kaushik, the learned counsel appearing for the applicant, and Ms. Sangita Rai, the learned counsel appearing for the respondents.

2. The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

> ñi) to call for the record of the case and quash/set aside the impugned orders, mentioned in para 1 of this OA including findings of EO and also to provide all consequential benefits including the arrear(s) of salary & entire suspension period as period spent on duty for all purposes and intents;
> ii) to award costs in favour of applicant; and
> iii) to pass any other order(s) which this Honôble tribunal deem just and equitable in the given set of circumstances of the matter.ò

3. Brief facts giving rise to the present O.A. are as follows:

3.1 On 17.9.1999, one Shri Vidyanand Prasad, r/o H.No.801/1-A, Munirka Village, had lodged a complaint with Anti Corruption Branch, GNCT of Delhi, that his son Amit, aged about 16 years, was detained at PS Vasant Vihar for the whole day on 15.9.1999 by W/SI Shakuntla Chauhan and Const. Atma Ram (applicant herein) in connection with a theft committed by her servant Seema. In the evening when Shri Vidyanand Prasad (hereinafter referred to as ñcomplainantò) went to secure the release of his son, the applicant demanded Rs.10,000/- and one gold ring weighing 9 grams as illegal gratification. The deal was struck for Rs.5,000/- and one gold ring weighing 5 grams. The same was given to the applicant on 15.9.1999, who later passed on the same to W/SI Shakuntala Chauhan. The

applicant further demanded Rs.4000/- for returning the gold ring and to hush up the case finally.

3.1.1 On the aforesaid complaint, a raiding party of A.C.Branch was organized, and a trap was laid at the shop of the complainant, and the applicant was caught red handed, when he demanded and accepted Rs.4000/- as illegal gratification from the complainant. The gold ring was recovered from the possession of W/SI Shakuntala Chauhan. A case FIR No.35/99 under POC Act, PS Anti Corruption Branch, was registered against the applicant and co-accused W/SI Shakuntala Chauhan, and they were arrested and placed under suspension w.e.f. 17.9.1999.

3.1.2 In the said criminal case, the learned Special Judge, Delhi, vide its judgment dated 24.1.2008 and order dated 25.1.2008, found the applicant and his co-accused guilty for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and accordingly, convicted and sentenced each of them to undergo RI for two years along with fine of Rs.2500/-, and, in default to undergo SI for one month, for each of the offences, with direction for the sentences to run concurrently.

3.1.3 In the wake of the said judgment of conviction and sentence, the Disciplinary Authority (hereinafter referred to as ñDAò) passed an order dated 16.7.2008 under the provisions of Article 311(2)(a) of the Constitution of India dismissing the applicant from service with immediate effect. The appeal filed by the applicant against the DAôs order was rejected by the Appellate Authority, vide its order dated 13.10.2008.

3.1.4 The applicant filed OA No.2919 of 2009 challenging the abovementioned orders passed by the DA and AA. OA No.2919 of 2009 was decided by the coordinate Bench of the Tribunal, vide its order dated 12.3.2010, which is reproduced below:

> ñAn FIR dated 20.09.1999 had been lodged, implicating the applicant which ultimately led to the arrest of the applicant. He was a Constable in Delhi Police. In due course, the applicant had been convicted along with another person on 25.01.2008. Coming to know of such development, the Deputy Commissioner of Police had on 16.07.2008 dismissed the applicant from service in exercise of powers under the second proviso to Article 311 (2) (a) of the Constitution of India. This is Annexure A-1 order. The appeal filed stands rejected by order dated 13.10.2008. These orders are under challenge.
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> 2. The Deputy Commissioner had issued Annexure A-1 order in the light of a circular that had been issued by the Commissioner of Police in 2005. It is not disputed now that the validity of the circular had been subjected to challenge and this Tribunal had in OA 544/2006 and connected cases held that the circular will have no automatic application in view of the embargo that is prescribed by Rule 11 (1) of the Delhi Police (Punishment and Appeal) Rules. It is applicantôs case that before the termination order had been issued, an appeal had been filed against the Sessions Court judgment, and it is even now pending. The judgment of Tribunal as above has been upheld by the High Court and it is also submitted that the offending circular later on had been withdrawn.
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> 3. Learned counsel for the applicant submits that taking into account the above facts, the orders terminating the services of the applicant requires to be set aside.
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> 4. We had heard Mr. Gangwani, appearing for the respondents, who submitted that the applicant had been convicted for an offence involving moral turpitude and, therefore, the rights of the administration as exercised are not liable to be interdicted. However, the submission as above is not acceptable as the applicant is entitled to the protection of law. So long as there was an appeal filed by him which position is admitted, it operates automatically as stay, since Rule 11 (1) provides that although in a case of conviction without further inquiry dismissal could be brought about, such steps, however, are not to be enforced in cases where there is an appeal filed by the convicted person. Administration is to wait for the outcome of the appeal so filed. The circular relied on the department overlooked the rule, and it was for that reason that it was quashed.

> 5. We set aside the impugned orders and direct that the applicant is to be reinstated in service. For the present, he will be deemed as under suspension from the date of his termination of service, and it will be within the rights of the respondents either to continue the suspension or to accommodate the applicant in any non-sensitive post. The latter course would be more acceptable, since it is most likely that the appeal will be heard only after years.ò

3.2 The applicant was reinstated in service but was kept under suspension from the date of his dismissal from service, i.e., 16.7.2008. The DA passed order on 22.3.2011 that the applicant be dealt with departmentally under the provisions of Rule 16 of the Delhi Police (Punishment &Appeal) Rules, 1980.

3.3 The summary of allegations, list of witnesses, and list of documents, along with documents to be relied upon, were prepared and duly served on the applicant. The summary of allegations served on the applicant is reproduced below:

> ñIt is alleged against Ct.Atma Ram No.1223/SW (now 1483/SW)(PIS No.28940669) that on 17.9.1999, one Shri Vidhyanand Prasad, r/o H.No.801/1-A, Munirka Village, had lodged a complaint with Anti Corruption Branch, GNCT of Delhi, that his son Amit, aged about 16 years, has been detained at Police Station Vasant Vihar for the whole day on 15.9.1999 by W/SI Shakuntla Chauhan No.D/2716 and Ct. Atma Ram No.1223/SW on the complaint of one Shyam Prabha Anand, r/o A-9/20 Vasant Vihar regarding a theft committed by her servant Seema. It was also alleged that his son had been taken to P.S.Vasant Vihar. In the evening when Shri Vidyanand Prasad went to secure the release of his son, Ct.Atma Ram demanded Rs.10,000/- and one gold ring weighing 9 gms. as illegal gratification. The deal was struck for Rs.5,000/- and one gold ring weighing 5 gms. The same was given to Ct.Atma Ram No.1223/SW on 15.9.1999 who later passed the same to W/SI Shakuntala Chauhan No.D/2716. Ct.Atma Ram further demanded Rs.4000/- for returning the gold ring and to hush up the case finally.
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> On the statement of the complainant Sh. Vidhyanand Prasad r/o H.No.801/1-A, Munirka Village a raiding a raiding party of Inspr. Niranjan Singh, punch witness and other staff of AC Branch was organized. A trap was laid at the shop of the complainant and the defaulter Ct.Atma Ram No.1223/SW was caught red handed when he demanded and accepted Rs.4000/- as the illegal gratification from the complainant. The gold ring was recovered from the possession of W/SI Shakuntala Chauhan. The bribe money was recovered from the backside pocket of pant of defaulter constable. On the basis of above facts a case FIR

> No.35/99 u/s 7/13 POC Act, PS AC Branch, Govt. of NCT, Delhi, was registered aganst defaulter W/SI Shakuntala Chauhan and Const. Atma Ram No.1223/SW and they were arrested. The Hon'ble court of Sh.A.S.Yadav, Special Judge, Delhi vide its judgment dated 25.1.2008 convicted Constable Atma Ram No.1223/SW along with the other accused in the above mentioned case and awarded a sentence for two years RI, with a fine of Rs.2500/- each constable Atma Ram No.1223/SW and W/SI Shakuntala Chauhan under section 7 and 13(1)(d) of the POC Act 1988 in case of default of payment of fine, the convicts had have to undergo further simple imprisonment for a period of one month on each count. The Constable filed an appeal against the conviction in the Hon'ble High Court of Delhi which is pending for decision.
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> The above act on the part of Constable Atma Ram No.1223/SW for not maintaining integrity and behaving in a manner which is unbecoming of a govt. servant is in violation of Rule (3)(I)(III) of CCS (Conduct)Rules 1964 and amounts to gross misconduct, negligence, indulging in malpractice and derelictions in the discharge of his official duties which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980.ò was registered against the applicant and h is co-accused W/SI Shakuntala Chauhan and they were arrested. They were placed under suspension w.e.f. 17.9.1999.ò

3.3.1 The applicant denied the allegations and preferred to face regular departmental proceedings. Accordingly, the applicant was given an opportunity to engage a defence assistant to assist him in the DE. During the departmental enquiry, seven witnesses were examined on behalf of the prosecution. Thereafter, the draft charge prepared by the EO and approved by the DA was served on the applicant. The applicant did not plead guilty of the charge and opted to produce the list of DWs within the stipulated period, but he failed to produce the same. Later, the applicant submitted a written statement of his defence.

3.3.2 After analyzing the evidence/materials available on record, including the applicant's written statement of defence, the EO submitted its report/findings on 30.1.2012 holding the charge against the applicant as substantiated.

3.4 Tentatively agreeing with the findings of the EO, the DA served a copy of the findings of the EO upon the applicant for submission of his representation thereto. The applicant submitted his representation on 1.3.2012. After considering the materials available on record, including the applicantôs representation dated 1.3.2012, and after hearing the applicant on 10.4.2012, the DA passed the order of punishment on 22.5.2012 dismissing the applicant from service with immediate effect and deciding the applicantôs suspension period from 17.9.1999 to the date of the order dated 22.5.2012 as óperiod not spent on dutyô for all intents and purposes.

3.5 After hearing the applicant and considering the materials available on record, including the grounds urged by the applicant in his appeal, the applicantôs appeal against the DAôs order was rejected by the Appellate Authority, vide its order dated 29.11.2012.

3.6 Hence, the present O.A. has been filed by the applicant.

4. The applicant has contended, inter alia, that the EO has failed to take into account the pleas raised by him in the written statement of defence. Complainant-Sh.Vidyanand Prasad, cited as PW at sl.no.1 of the list of witnesses, has not been examined during the departmental enquiry to prove the gist of evidence given against him as well as the contents of complaint dated 17.9.1999(ibid). His posting and assigned job have not been established. There are inconsistencies and contradictions in the depositions of P.Ws. The punishment of ódismissal from serviceô is disproportionate to the gravity of the misconduct proved against him.

5. Resisting the O.A., the respondents have filed a counter reply. It has been pleaded by the respondents that there is sufficient evidence to prove the charge against the applicant. The EO, DA and AA have all recorded the findings in fair manner. It has also been asserted by the respondents that the pleas taken by the applicant in the written statement of his defence have been duly considered and findings thereon arrived at by the EO. The grounds as now urged by the applicant before the Tribunal have also been considered by the DA. The question of quantum of penalty, as raised by the applicant, has also been considered and decided by the AA against the applicant for the reasons indicated in the order rejecting the applicantôs appeal. The procedure established by law has been duly followed. There is no infirmity in the orders passed by the authorities. Therefore, the O.A. is liable to be dismissed.

6. After evaluating the evidence (both oral and documentary) led by the prosecution, and considering the materials available on record, including the written statement of defence submitted by the applicant, the EO has recorded the following findings:

> ñThe undersigned has gone through the depositions of PWs as well as other material evidence placed on the file and it has been established that delinquent was posted in PS Vasant Vihar in the year 1999 vide Ex.PW-1/A. Moreover, this fact is also corroborated through DD No.39A dated 17.09.99 PS Vasant Vihar (Ex.PW-5/A) and report of PW-5 Inspr.Suresh Dagar, the then SHO/PS Vasant Vihar (Ex.PW-5/B) which dispatched to HAP/SW Distt. vide No.1197/SHO V.Vihar dated 20.09.1999. Nonetheless, other PW-4 did not confirm the specific duties assigned to delinquent on that particular period, due to non-availability of Chitha (Roster Register) and DD Register of 1999, which were destroyed vide order dated 03.07.2003 of ACP.V.Vihar(Ex.PW-4/D). PW-4 is a formal witness and as such his statement does not cast any adverse effect on this issue in particular. On 17.09.1999 complainant PW-7 Sh.Vidhyanand Prasad s/o Shiv Balak Prasad had lodged a complaint with Anti-Corruption Branch, GNCT, Delhi against W/SI Shakuntala Chauhan

D/2716 and Ct.Atma Ram No.1223/SW now 1483/SW for demanding a bribe of Rs.10,000/- and a gold ring for release of his son Amit from their detention as it is evident from the statement of PW-7/Complainant recorded by Inspr.Niranjan Sigh vide Ex.PW-2/A on same day in front of panch witness Sh.Shiv Kumar (PW-3). This fact is confirmed by PW-3 in his examination-in-chief as well as in cross-examination too. No doubt in the instant enquiry, PW-7 the complainant could not be examined because despite of all our efforts he could not be traced nor his present whereabouts has so far been found. Keeping in view non-availability of complainant/PW 7, the provisions of rule 16(3) of Delhi Police (Punishment & Appeal) Rules are invoked in this regard and according to which the statement of said PW which was recorded u/s 161 CrPC by Inspr/IO M.S.Sangha, during the course of investigation of case FIR No.35/99 u/s 7/13 POC Act, PS AC Branch is brought on record as Ex.PW-6/E which is admissible as a piece of evidence and is very relevant in proving the allegation levelled in charge. After completing the pre-raid proceeding which are marked as PW-2/B a trap was laid by the team of AC Branch comprising PW-2, PW-3, PW-6 and PW-7 at the shop-cum-counter of complainant (PW-7) and after getting the signal from panch witness (PW-3), delinquent was caught red-handed by Inspr. Niranjan Singh (now retd. ACP) with the help of raiding party and recovered the bribe of Rs.4000/- from back side pocket of his pant and seized vide memo Ex.PW-2/D. The right hand wash and pant pocket wash exhibited as RHW-1 & RHW-II were also seized vide memo Ex.PW-2/E. After completing the enquiries on the spot, PW-2 got registered a case vide FIR No.35/99 (Ex.PW-6/B). In continuation to the same trap, gold ring was recovered from W/SI Shakuntala Chauhan and the same was seized vide memo Ex.PW-2/D. In addition to the above seizure, PW-2 also recovered some relevant documents from the IO room of W/SI Shakuntala Chauhan which were seized vide memo PW-2/O. Thereafter during the course of investigation, PW-6 formally arrested both delinquents W/SI Shakuntala Chauhan & Ct. Atma Ram in aforementioned case & prepared the site plans vide Ex.PW-6/A & Ex.PW-6/C as well as IO report and arrest report, which are marked as PW-6/A & Ex.PW-6/C as well as IO report and arrest report, which are marked as PW-6/F & PW-6/G respectively. Thereafter PW-5 Inspr. Suresh Dagar, the then SHO/PS Vasant Vihar also lodged the information of arrest of W/SI Shakuntala Chauhan & Ct.Atma Ram vide DD No.39A dated 17.09.1999 and a report to this effect was dispatched vide No.1197/SHO/V.Vihar dated 20.09.99 (Ex.PW-5/B). Later on PW-6 had deposited the seized exhibits in FSL Malviya Nagar, New Delhi for expert opinion. After receiving FSL report which marked as Ex PW-6/I, PW-6 filed the charge sheet against both delinquents i.e. W/SI Shakuntala Chauhan and Ct.Atma Ram. Although Sh.Shiv Kumar PW-3 who is material witness has given contradictory reply to a question during cross-examination that on 17.09.99 complainant Vidhyanand Prasad had written a complaint himself in the office of IO of AC Branch in his presence. Whereas on perusing the complaint Ex.PW-2/A, it is found to be a statement of PW-7 recorded by PW-2. Besides, the PW-2 stated in his examination in chief that bribe money was recovered from delinquent on getting signal from complainant PW-7 whereas PW-3 stated that as soon as delinquent accepted the bribe money & kept in his back side pocket of his pant, he signaled to IO PW-2 & other members of raiding party. When delinquent was caught red-handed, it was he (PW-3) who recovered the bribe money from the side pocket of pant of delinquent which is contradictory but it is also worthy to point out here that PW-2 had

cleared this contradiction during his cross-examination. It is evident therein that delinquent Ct.Atma Ram has played role of mediator in between W/SI Shakuntala Chauhan and complainant PW-7 and actively participated in demanding and acceptance of Rs.4000/- from complainant PW-7 in presence of panch witness PW-3 for hushing up the case finally. As the AC Branch is functioning only to prevent the corruption in Govt. Deptt. and during trap apprehended the delinquent after he had demanded and accepted the bribe from PW-7, hence such contradictions in the statements of PW-2 & PW-3 as well as non-appearance of PW-7 do not absolve the delinquent from his indulgence in corrupt activities.

The undersigned has also gone through the defence statement of delinquent and it has observed that the pleas advanced by the delinquent in his statement have no force and discarded. No doubt Vidhyanand Prasad complainant (PW-7) has not been examined in person in the proceedings of instant enquiry in order to support the allegations made in this complaint dated 17.09.99 but in this regard as it has already been explained that by virtue Rule 16(3) of DP (Punishment & Appeal) Rules and in consonance with the spirit of instruction contained in SO A-20, if the presence of any witness cannot be ensured without undue delay, inconvenience or expenses, EO is competent to bring on record earlier statement of such witness provided it has been recorded and attested by such officer during an investigation of criminal case or judicial enquiry. In the instant enquiry despite of best efforts, PW-7 is not traceable, hence his statement recorded u/s 161 CrPC by IO/Inspr. MS Sangha (PW-6) during the course of investigation of case FIR 35/99 PS AC Branch brought on record vide Ex.PW-7/A in order to avoid further undue delay in finalization of instant matter and it is admissible by virtue of rule 16(3) of DP (Punishment & Appeal) Rules. As regards the contradiction and inconsistencies in the statements of PW-2 & PW-3, it has already been discussed above and now it is relevant to mention here that PW-3 has given contradictory version deliberately in respect of writing & submission of complaint dated 17.09.99 by PW-7 himself in AC Branch as well as no demand of bribe for himself by delinquent, in order to protect the delinquent from any drastic departmental action and seems to be managed by delinquent. Similarly PW-1 Ct.Deepak Kumar, being posted in Personnel Branch of South-West Distt. produced the transfer/posting record of delinquent and as per the same, delinquent was transferred to PS Vasant Vihar from South Distt. Lines vide order 4080-96/SIP/SWD dated 07.04.1988 and as per DD No.30A/PS V.Vihar dated 28.09.1999 delinquent was arrested in case FIR No.35/99 u/s 7/13 POC Act PS AC Branch which proved delinquentôs posting in PS Vasant Vihar at that point of time, hence deposition of PW-4 Ct.Avnesh Kumar who is at present chitha Munshi of PS Vasant Vihar does not create any confusion regarding delinquentôs posting even though the Chitha and DD Register of 1999 were destroyed as per existing instructions. Whereas in his deposition PW-5 Inspr. Suresh Dagar, the then SHO/V.Vihar has also confirmed the posting of W/SI as well as delinquent in PS when they were arrested by the staff of AC Branch during raid. Moreover his plea regarding nothing incriminating established against him in the statement of PW-6 wherein the said PW did not utter even a single word of support of charge of demand and acceptance of illegal gratification, is baseless and unsound because PW-6 has conducted the investigation of POC case in continuation of trap which was laid by raiding party of which he was an active member and had taken the custody of delinquent as well as possession of recovered bribe amount of Rs.4000/- including all seizures

> from R.O. P.W-6 arrested the delinquent and subsequently after recovering the gold ring from W/SI he effected her arrest. Both the accused were arrested in POC case after successful raid which proved the indulgence of delinquent in demanding and acceptance of Rs.4000/- and gold ring respectively from complainant PW-7 in the presence of panch witness PW-3. Thereafter similar facts were recorded u/s 161 CrPC by him in the statements of all relevant PWs even though, he filed charge sheet against delinquent and W/SI as well in trial court after collecting sufficient evidence in this regard. Both the delinquents were convicted by trial court on the basis of such specific evidence. As such the testimony of deposition of officers of AC Branch including PW-2, the panch witness who had apprehended delinquent red-handed and subsequently arrested them while demanding and accepting the bribe of Rs.4000/- cannot be discarded at any stage as the AC Branch officers had no enmity with delinquent. Hence, the preponderance of probability for the involvement of delinquent in corruption cannot be ruled out.
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> On the basis of above discussion, it has been observed that the delinquent has taken Rs.4000/- as illegal gratification from complainant which was subsequently recovered by the raiding officer of FIR No. 35/99 u/s 6/13 POC Act PS AC Branch, GNCT, Delhi in presence of panch witness. Therefore, the misconduct on the part of delinquent into the matter cannot be ruled out.ò

7. It transpires from the impugned order dated 22.5.2012 that the DA has duly considered the pleas raised by the applicant in his representation against the findings of the EO, but has found no substance therein. The relevant portion of the DAôs order dated 22.5.2012 is reproduced below:

> ñIn his representation against findings of EO the delinquent Constable has taken main pleas that 1) The EO has not taken his defence into consideration at the time of preparation of his findings. 2) The duty assigned to him on 17.9.1999 could not be proved as it has been established by the statement of PW-4 that the duty roster had been destroyed and he only produced the destruction certificate. 3) The E.O. himself admitted in his findings that the complainant Vidyanand Prasad could not be examined during the proceedings despite best efforts. However his earlier statement recorded u/s 161 CrPC which did not consist the signature of the complainant has been taken on record. This statement as well as PW-6 have been relied upon which is neither legal nor admissible. 4) The complainant himself did not participate in the DE proceeding to prove the allegations contained in his complaint dated 17.9.1999. Therefore, allegations cannot be substantiated. 5) The E.O. himself has admitted contradictions in the statements of PW-2 and PW-3 (raiding officer and Punch Witness). PW 3, the Punch witness has clearly admitted during enquiry that the delinquent did not demand the tainted money for himself. The E.O. has presumed without any evidence on record that PW-3 has done so deliberately in order to protect the delinquent and seems to be managed by delinquent.

I have carefully gone through the entire DE file, findings of EO, written defence statement of the delinquent Constable, representation of the delinquent Constable against the findings of EO. He was also heard in OR on 10.4.2012. During oral submission he had nothing to add what he has already been stated in his written representation. The E.O. has conducted fair and discreet enquiry with logical conclusion and submitted his findings discussing all points raised by the delinquent Const. in his defence statement. It is incorrect to say that duty assigned to the delinquent Const. could not be proved. It has been established that the delinquent was posted at PS Vasant Vihar in the year 1999 vide exhibit PW-1/A. It is correct that PW-7, the complainant could not be examined as he was not traceable, his statement recorded u/s 161 CrPC in case FIR No. 35/99 u/s 3/7 POC Act PS AC Branch has been taken on record under the provision of rule 16(3) of Delhi Police (Punishment & Appeal) Rules, 1980 which is admissible as a piece of evidence and is very relevant and relied upon document to prove charge in a D.E. It has been proved from the statement that on 15.09.99 the son of the complainant Sh.Amit 16 years was detained by W/SI Shankutla Chauhan and Const. Atma Ram of PS Vasant Vihar in connection with a servant theft case and in order to secure his release, he had given a gold ring weighing 5 gms & Rs.5000/- as bribe money to W/SI Shakuntla Chauhan through Ct. Atma Ram who struck a deal on the direction of W/SI. Thereafter Rs.4000/- were demanded by Ct. Atma Ram for hushing up the theft case finally. On harassment from said W/SI & Ct. he had consented to pay Rs.4000/- as bribe on 17.09.99 to Ct.Atma Ram & W/SI. On 17.09.99 he made a complaint to Anti Corruption Branch of GNCT, Delhi, where PW-2 Inspr.Niranjan Singh got recorded his statement vide PW-2/A and after pre-raid proceeding, laid a trap at his shop-cum-counter and caught the delinquent Ct. red handed with bribe money. The bribe money was recovered from the possession of delinquent & seized whereas W/SI Shakuntala Chauhan was arrested from police station and gold ring was recovered from her possession. Thereafter ase vide FIR No. 35/99 u/s 7/13 POC Act & 120B IPC was got registered on his statement and both were arrested in this case. Being complainant, he signed on each recovery memos as well as on all relevant documents of this cae. These facts have been corroborated with the deposition made by all other material witnesses. The pea taken by the delinquent Const. Atma Ram No.1223/SW (Now 1483/SW) (PIS No.28940669) in the representation submitted in response to the findings that PW-3, the Punch Witness has admitted during cross examination that the delinquent did not demand the tainted money for himself, carry no weight, as the demand and acceptance of bribe is itself a crime and delinquent could not be absolved on this plea. Moreover, delinquent was caught red handed while accepting the bribe. Therefore, I fully agree with the findings of EO that the charge against delinquent Const. Atma Ram is substantiated.

Corruption eats into the vitals of our society. Indulging in corrupt activities is not only immoral/reprehensible act but also gravest misconduct by a police officer being public servant entrusted with the responsibility of protecting the society. Such a gross misconduct by the police officer is bound to destroy the faith of people in uniform police force. On the basis of facts and circumstances of this case and in the entirety of situation I have reached the conclusion that further retention of the delinquent Const. in police force is not warranted in public interesté .ò

8. The appeal made by the applicant against DAôs order was rejected by the AA, vide its order dated 29.11.2012, the relevant part of which is reproduced below:

> ñI have gone through his appeal, punishment order, and D.E. file. I have also heard him in O.R. His fresh pleas are as under:
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> 1. Giving reasons in the proceedings as well as in the final order is a judicial requirement. The reasons given in the finding as well as in the final order are totally nebulous . A final order passed must discuss departmentôs case, the petitionerôs defence of both sides, with the reason as to why Deptt.ôs evidence is more acceptable than that of delinquent.
> 2. In deciding the quantum of penalty, the circumstances in which the misconduct was committed, modus operandi adopted, the motives operating in mind and the magnitude of the misconduct must be taken into account, since all these factors only considered in a coordinate manner determine the gravity of the misconduct. But in this case it has not taken place with the obvious and clear reasons.
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> The pleas put forth by the appellant are devoid of merit. The punishment order under appeal is self explanatory and reasoned, based on evidence that came on record during DE proceedings. The Disciplinary Authority has rightly determined the punishment giving regard to the misconduct committed by him and its gravity that has been sufficiently proved against him after he was afforded ample opportunity to defend himself during the DE proceedings.
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> The appellant has also been tried in court on the same set of facts vide case FIR No.35/99 U/s 7/13 POC Act and 120B IPC PS AC Branch. In this case, he along with his co-accused has been convicted and sentenced to two yearsô RI with a fine of Rs.2500/- each u/s 7 and 13(1)(d) of the POC Act, 1988 and in case of default of payment of fine, the convicts will undergo further simple imprisonment for a period of one moth on each count. The conduct of the appellant is grossly immoral and inconsistent with the due discharge of his official duties. The appellant being a Govt. servant was expected to maintain a decent standard of his conduct and uphold the dignity of law, but he involved himself in the activities, which are totally inconsistent with these tenets.
>
> During OR, he prayed for taking a lenient view and also gave reference of appeal of Constable Naresh Pal No.8399/DAP vide which the appellate authority has set aside the punishment of his dismissal. This plea of the appellant is not acceptable at all, as both the cases are not identical and also each case has its own merits. So far as it relates to the case in hand, I find no merit in it to be considered for any minor/less punishment. The Disciplinary Authority has rightly weighed the punishment on the strength of his misconduct. Showing any leniency in such matters will not only send a wrong signal of misplaced sympathy, but will also be grossly detrimental to the norms of conduct/discipline that is expected by the Senior Officers.

> Keeping in view the misconduct committed by the appellant in the discharge of his official duties, and evidence that came on record during DE proceedings, I find no reason to intervene in the Punishment Order under appeal. Thus the appeal is rejected and the punishment of dismissal from service awarded by the Disciplinary Authority is upheld.ò

9. After going through the inquiry report submitted by the EO and the orders passed by the DA and AA, we have found that the EO has taken into consideration the pleas raised by the applicant in the written statement of his defence. The pleas, as now raised before this Tribunal in the present proceedings, have been duly considered and findings arrived at by the DA. The DA has assigned cogent and convincing reasons in support of its findings rejecting all the pleas raised by the applicant in the written statement of his defence. After recording cogent reasons, the AA has rejected the prayer of the applicant for taking a lenient view in the matter of imposition of punishment. The imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not to the Tribunal.

10. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been

gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide.

11. In **State of Mysore v. Shivabasappa**, (1963) 2 SCR 943 = AIR 1963 SC 375, it has been held thus:

> "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 whom 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."

12. 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, has 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.
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> person charged and he is given an opportunity to cross-examine them."

13. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others,** AIR 1984 SC 1805, it has been laid down by the Hon'ble Supreme Court that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It has also been laid down that where a quasi judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

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

> ñ12. 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 issuedò.

15. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows:

"We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

16. The above view has been followed by the Hon'ble Apex Court in **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil,** (2000) 1 SCC 416, wherein it has been held as under:

ñ...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution.ò

17. In **Syed Rahimuddin v. Director General, CSIR and others**, (2001) 9 SCC 575, the Hon'ble Apex Court has observed as under:

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

18. In **Sher Bahadur v. Union of India,** (2002) 7 SCC 142, the order of punishment was challenged on the ground of lack of sufficiency of the evidence. The Hon'ble Apex Court observed that the expression "sufficiency of evidence" postulates "existence of some evidence" which links the charged officer with the misconduct alleged against him and it is not the "adequacy of the evidence".

19. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan,** (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

> ñBy now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authorityé ..ò

20. In **Union of India Vs. Parma Nanda,** (1989) 2 SCC 177, the Hon'ble Supreme Court, while considering the jurisdiction of the Tribunal to interfere in the matter of punishment imposed in disciplinary proceedings, made the following observations:

> ñ27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be

> equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules ad in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.ò

21. Similar view has been expressed by the Hon'ble Supreme Court in **State Bank of India and others Vs. Samarendra Kishore Endow and another**, (1994) 2 SCC 537. In paragraph 10 of the judgment, the Hon'ble Supreme Court observed thus:

> ñOn the question of punishment, learned counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It ñis not an appeal from a decision, but a review of the manner in which the decision was made. (Per Lord Brightman in Chief Constable of the North Wales Police v. Evans (1982 (3) All E.R. 141 at 155) and H.B.Gandhi v. M/s Gopinath & Sons (1992) Suppl. (2) SCR 312). In other words the power of judicial review is meant ñto ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.ò

22. In **Jai Bhagwan Vs. Commissioner of Police and others,** (2013) 11 SCC 187, the Hon'ble Supreme Court held thus:

> ñ10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine

> whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishmenté ..ò

23. The materials on record when judged on the touchstone of the legal principles adumbrated in paragraphs 11 to 22 of this order leave no manner of doubt that the findings of the EO and the orders passed by the DA and AA do not suffer from any illegality, irregularity, or perversity.

24 In *P.Satyanarayan Murthy Vs. The Dist. Inspector of Police and anr.,* Criminal Appeal No.31 of 2009, decided on 14.9.2015, which has been relied on by Mr. K.K.Kaushik, the learned counsel appearing for the applicant, the Hon'ble Supreme Court has observed that the proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)((d)(i)&(ii) of the Prevention of Corruption Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *de hors* the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or Section 13 of the Act would not entail his conviction thereunder.

25. The judgment in *P.Satyanarayan Murthy Vs. The Dist. Inspector of Police and anr.(supra)* is of no avail to the applicant. The principle noted above was laid down by Their Lordships while considering the accused-appellantôs Criminal Appeal which arose out of the judgment passed by the Honôble High Court of Andhra Pradesh sustaining the conviction of the appellant u/s 13(1)(d)(i) r/w Section 13(2) of the Prevention of Corruption Act, 1988, as well as the sentence thereunder. In the present proceeding before the Tribunal, the applicant has called in question the orders passed by the statutory authorities in the departmental proceedings initiated against him. On the basis of the statement of the complainant recorded under Section 161 CrPC, which has been admitted in evidence in the departmental enquiry in accordance with Rule 16(3) of the Delhi Police (Punishment & Appeal)Rules, 1980, as well as other documentary and oral evidence available on record, the EO and the DA have come to the conclusion that the bribe was demanded by the applicant and co-delinquent W/SI Shakuntala Chauhan. After analyzing the evidence led by the prosecution, including the evidence of the complainant who was examined during the trial as PW 7, as well as the evidence led by the defence and the statements of the applicant and his co-accused recorded under Section 313 Cr.P.C., the learned Special Judge, Delhi, has found the applicant and his co-accused guilty, and convicted and sentenced them for the offences under Sections 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, vide judgment dated 24.1.2008 and order dated 25.1.2008. Criminal Appeal No.152 of 2008 filed by the

applicant against the trial courtôs judgment of conviction and sentence has also been dismissed by the Hon'ble High Court of Delhi, vide common judgment dated 28.8.2014 passed in Criminal Appeal No.135 and 152 of 2008, a copy of which has been produced before us by Ms. Sangita Rai, the learned counsel appearing for the respondents, during the course of hearing.

26. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

27. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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