

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

O.A. No.3343 of 2013

This the 13th day of November, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

1. Const. Mannu Rana,
s/o Shri Satpal Singh,
R/o 38-39, Pocket-VIII,
Sector-24, Rohini,
Delhi.
2. Const. Rajesh Kumar,
s/o Shri Rajender Singh,
r/o VPO Salkhaol,
The-Bahadurgarh,
Jhajjar, Haryana.

....Applicants

(By Advocate : Shri Sachin Chauhan)

VERSUS

- 1). The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
- 2) The Addl. Commissioner of Police (PCR),
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
- 3). The Addl. Deputy Commissioner of Police (GA),
PCR
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
- 4). The Addl. Deputy Commissioner of Police,
Vigilance,
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

.....Respondents

(By Advocate : Mrs. P.K. Gupta)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

By filing the present OA, the applicants are seeking the following reliefs:-

- “i) To set aside the order initiating the departmental enquiry along with the order dated 19.07.2011 whereby the major punishment is inflicted upon the applicants and the order of the appellate authority dated 30.08.2012 and to further direct the respondents that the forfeited years of service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances. The respondents be directed to treat the entire suspension period of the applicants as spent on duty for all intents and purposes.
- ii) To set aside the finding and supplementary findings of enquiry officer.
- iii) To set aside the orders whereby the name of the applicant has been included in secret list of doubtful integrity and to further direct the respondents to remove the name of the applicants from secret list of doubtful integrity from the date of inception.
- iv) Any other relief which this Hon’ble Court deems fit and proper may also awarded to the applicant.”

2. Brief facts of the case as enumerated in the OA are that the applicants while working as Constables in the respondent – Department were dealt departmentally vide order dated 22.1.2009 on the following allegations:-

“It is alleged against Ct. Rajesh Kumar, No. 1814/T PIS No. 28000103) and Mannu Rana, No. 1443/T (PIS No.28981001) that on 28.11.07, Sh. Varun Rana s/o Sh. Jagjit Singh Rana r/o Vill. & PO Khera Garhi, Delhi-82 who is a practicing lawyer in Rohini Courts, Delhi approached A.C. Branch, GNCT of Delhi with a complaint that Raj Kumar, the Ahalmad in the

Court of Sh. Rajan Jayant, Special M.M. Delhi was demanding Rs.2000/- from him for clearing four traffic challans at his own level whereas total amount of challans was Rs.4700/-. The Ahalmad also assured the complainant that the challans would not be remain pending in the court after paying Rs.2000/- to him. On the basis of his complaint, a team of officials of A.C. Branch laid a trap alongwith punch witness after observing the usual procedure. Shri Raj Kumar S/o Khusal Chand r/o 445/2, Paschim Puri, Delhi working as Ahalmad in the above said court was caught red handed while demanding, accepting and obtaining Rs.2000/- as bribe from the complainant. He was arrested on the same day and is on court bail granted by Sh. A. S. Yadav, Spl. Judge, Tis Hazari Courts, Delhi on 02.01.08.

During the investigation, accused Raj Kumar disclosed that he alongwith Ct. Naresh Kumar (Naib Court/STA), Sunil Kumar (Peon, Court No.115, Rohini), Ct. Mannu Rana (Naib Court and Ct. Rajesh (Naib Court) were involved in the corrupt practices in disposing off the Traffic challans, illegally at their own as they used to take half of the amount of fine (as per the penal section mentioned in the challans) from the violator or advocate and then distribute it among themselves which is further supported by the statement of advocate Jai Ram recorded u/s 161 Cr.P.C. Sh. Kamal Kishor S/o Sh. Shambhu Dayal r/o B-2/42, Rama Vihar, Karala, Delhi stated in his statement recorded u/s 161 Cr.P.C. that he paid Rs.2000/- to Const. Rajesh Kumar for the release of R/C of vehicle No.DL-1N-0856. Sh. Gaurav Bammi S/o Shri Ramesh Bammi r/o B-116, Ashok Vihar Phase-I, Delhi-52 also stated in his statement recorded u/s 161 Cr.P.C. that he paid Rs.2000/- to Ct. Mannu Rana for getting his D/L released.

On the basis of facts and circumstances Ct. Naresh Kumar (Naib Court/STA Deptt) S/o Late Sh. Bhoop Singh r/o H.No.RZ-183 Roshan Garden, Najafgarh, Delhi and Sunil Kumar, peon s/o Mangal Ram r/o Ghat No. 28, Mahabat Khan Road, near Minto Road, New Delhi were arrested on 30.11.07 who are on court bail granted by Sh. A.S. Yadav, Special Judge, Tis Hazari Courts, Delhi on 07.12.07 Ct. Rajesh Kumar, No.1814/T s/o Sh. Rajender Singh r/o Vill. & PO Salkhaol, Tehsil Badadurgarh, Distt. Jhajjar, Haryana as arrested in the instant case on 08.09.08 who is on court bail granted by Sh. A.S.Yadav, Special Judge, Tis Hazari Courts, Delhi on 29.09.08.

2.1 The applicants were given list of witnesses along with list of documents relied in the departmental enquiry along with the summary of allegations.

2.2 The Enquiry Officer framed the charge against the applicants, according to the applicants, despite the fact that there was no evidence in support of allegations leveled against the applicant in the summary of allegation. The applicants were not also given sufficient opportunity to submit their defence statements in the departmental inquiry and thus the enquiry officer without waiting for the defence of the applicants and wrongly recorded within its finding that ample opportunity had been given to the applicants but still they had not submitted their defence statement, held the charge proved against the applicant in his report dated 12.11.2010.

2.3 The applicants made their replies to the findings and also appeared before the disciplinary authority in the O.R. However, the disciplinary authority instead of passing an order on the findings of Enquiry Officer and on the reply to the findings of the applicant remitted the matter back to the Enquiry Officer without passing any order under Rule 16 (x) of the Delhi Police (Punishment & Appeal) Rules, 1980. The disciplinary authority needs to pass an order under Rule 16 (x) if the enquiry is to be remitted back to the enquiry officer as the order itself will mention the reason for remitting the enquiry back to the enquiry officer and the same is for the

purpose that enquiry officer will conduct the supplementary enquiry only in respect of the reason for which the enquiry is remitted back to the enquiry officer by the disciplinary authority. In the present case, no order is passed under Rule 16 (x) of the Rules *ibid* and thus making the subsequent procedure the present departmental enquiry as bad in law.

2.4 Applicants further stated that to the great surprise of the applicants, the Enquiry Officer conducted a supplementary findings calling upon three court witnesses in addition to the witnesses examined in the departmental enquiry. The same act of conducting the supplementary finding and to further examine three additional witnesses as fourth witness is an act which is without competent and jurisdiction and is in absolute violation of laid down departmental rules and procedures under Rule 16 of the Rules *ibid*.

2.5 Applicants also stated that the applicants made defence statements in the supplementary findings. The Enquiry Officer gave supplementary findings proving the charge against the applicant without dealing with the evidence that has come on record and further ignoring the submissions and pleas of the applicant and merely on suspicion and surmises prove the charges against the applicants.

2.6 The applicants made replied to the said supplementary findings. However, the disciplinary authority vide order dated

19.7.2011 has imposed the punishment, i.e., five years permanent forfeiture of service upon the applicants without dealing with the submission and pleas of the applicants and further the suspension period was directed to be treated as period 'not spent on duty' for all intents and purposes.

2.7 Applicants further stated that they made a joint statutory appeal against the aforesaid order of punishment. However, the appellate authority rejected the same vide order dated 30.8.2012. The names of the applicants have been kept in secret list of doubtful integrity for a period of three years from the date of initiation of the Departmental Enquiry, which order has been communicated orally to them.

2.8 Feeling aggrieved by the aforesaid impugned orders, the applicant has filed this OA seeking the reliefs as quoted above.

3. In pursuance to the notice issued to the respondents, they have filed their reply in which they have stated the facts of the case that the joint departmental enquiry was initiated against the applicants vide order dated 22.1.2009 on the allegation that on 28.11.07, Sh. Varun Rana S/o Sh. Jagjit Singh Rana r/o V&PO Khera Garhi, Delhi-110082, who was a practicing lawyer (Registration No.D/598/2007) in Rohini Courts, Delhi approached Anti-Corruption Branch, GNCT of Delhi with a complaint that Sh. Raj Kumar, the Ahalmad in the court of Sh. Rajan Jayant, Special M.M., Delhi was

demanding Rs.2000/- from him for clearing four traffic challans (the total amount of Challans was Rs.4700/-) at his own level. The Ahalmad also assured the complainant that the challans would not remain pending in the court after paying Rs.2000.

3.1 On the basis of this complaint, a team of officials of AC Branch laid a trap along with Panch Witness after observing the usual procedure. Sh. Raj Kumar S/o Khusal Chand R/o 445/2, Paschim Puri, Delhi working as Ahalmad in the above said court was caught red handed while demanding, accepting and obtaining Rs.2000/- as bribe from the complainant. Accused Raj Kumar was arrested on 28.11.2007.

3.2 During the investigation, accused Raj Kumar disclosed that he alongwith Ct. Naresh Kumar (Naib Court/STA), Sunil Kumar (Peon, Court No.115, Rohini), Ct. Manu Rana (Naib Court and Ct. Rajesh (Naib Court) were involved in the corrupt practices of disposing off the Traffic challans, illegally, at their own as they used to take half of the amount of fine (as per the penal sections mentioned in the challan) from the violator or advocate and then distribute it among themselves. This was supported by the statement of advocate Jai Ram Garg recorded u/s 161 Cr.P.C.

3.3 Sh. Kamal Kishor S/o Sh. Shambhu Dayal r/o B-2/42, Rama Vihar, Karala, Delhi further stated in his statement

recorded u/s 161 Cr.P.C. that he paid Rs.2000/- to Const. Rajesh Kumar (co-applicant) for release of RC of vehicle No.DL-1N-0856. Sh. Gaurav Bammi S/o Shri Ramesh Bammi r/o B-116, Ashok Vihar Phase-I, Delhi-52 also stated in his statement recorded u/s 161 Cr.P.C. that he paid Rs.2000/- to Ct. Mannu Rana for getting his D/L released.

3.4 On the basis of facts and circumstances, Ct. Naresh Kumar (Naib Court/STA Deptt) S/o Late Sh. Bhoop Singh r/o H.No.RZ-183 Roshan Garden, Najafgarh, Delhi and Sunil Kumar, Peon Shri Mangal Ram r/o Ghat No. 28, Mahawat Khan Road, near Minto Road, New Delhi were arrested on 30.11.2007 in the instant case and later on granted bail by Sh. A.S. Yadav, Spl. Judge, Tis Hazari Courts, Delhi on 07.12.2007.

3.5 Constable Rajesh Kumar, No.2535/PCR (co-applicant) S/o Sh. Rajinder Singh R/o V&PO Salkhaol, Tehsil Badadurgarh, Distt. Jhajjar, Haryana was arrested in the instant case on 08.09.2008 and later on released on bail, granted by Sh. A.S. Yadav, Spl. Judge, Tis Hazari Courts, Delhi on 15.09.08. Constable Mannu Rana No. 1832/PCR (the applicant) S/o Sh. Satpal Singh r/o Village Garh (Nizampur), Tehsil Kharkhoda, Distt. Sonapat, Haryana was also arrested in the instant case on 25.9.2008 and released on bail granted by Sh. A.S. Yadav, Spl. Judge, Tis Hazari Courts, Delhi on 29.9.2008.

3.6 For the above said misconduct, the co-applicant Constable Rajesh Kumar No.2535/PCR was placed under suspension w.e.f. 8.9.2008 and applicant Constable Mannu Rana No.1832/PCR was placed under suspension w.e.f. 25.9.2008 (i.e. the date of their arrest r/w order No.7379-7400/HAP/T(D-I/HQ) dated 29.9.2008.

3.7 The departmental enquiry was entrusted to Inspector P.C. Jha, E.O./DE Cell, Delhi for conducting the same on day to day basis and to submit his findings. The Enquiry Officer completed the same after observing all usual formalities and submitted his findings with the conclusion that charge framed and served upon the applicant is proved.

3.8 Tentatively agreeing with the findings of E.O., a copy of findings was served upon the applicants vide order dated 7.1.2011 with a direction to make representations/ submission in writing to the disciplinary authority within 15 days from the date of its receipt failing which it will be presumed that they have nothing to say in their defence and a decision would be taken on merit. They were also called upon to show cause as to why their suspension period should not be treated as period not spent on duty. They received the same and submitted their representations. On perusal of the same and also hearing the applicants in O.R., the disciplinary authority returned the DE file to DE cell, Delhi to complete the DE in its right earnest vide Memo dated 28.2.2011. The

Enquiry Officer again submitted his supplementary findings which were received vide Memo dated 5.5.2011 with the conclusion that charge framed and served upon the applicants is proved. The supplementary findings was again served upon the applicants vide U.O. dated 12.5.2011 for making their representations. They received the same and submitted their representations.

3.9 The disciplinary authority after having carefully gone through the statement of PWs/Cws/defence statements/exhibits/findings of E.O., representation submitted by the applicants as well as record placed on file and after hearing the applicants in O.R. awarded the punishment of forfeiture of five years approved service permanently entailing proportionate reduction in their pay and they were also reinstated from suspension with immediate effect vide order dated 19.7.2011. Their suspension period mentioned above was also decided as period not spent on duty for all intents and purposes. The applicants filed appeal against the above punishment order and the appellate authority rejected their appeal vide order dated 29.8.2012.

3.10. They further stated that after service of charge, the applicants were directed to produce list of DWs, if any within three days and failing which they should submit their defence statement within 10 days under their proper receipt on

31.5.2010. The applicant Constable Mannu Rana did not submit list of DWs. The co-applicant Constable Rajesh Kumar submitted list of 2 DWs on 4.6.2010 and collected summons for the DWs. But none of the applicants produced DWs. On the direction of Senior Officer, they were given last opportunity on 20.7.2010 positively but they did not turn up. In spite of sufficient opportunity given to them, they neither produced any DWs nor submitted their defence statement.

3.11 The respondents have also stated that findings of E.O. were sent back to him for further inquiry. Initially, a copy of the finding of E.O. was served upon the applicants vide U.O dated 7.1.2011 with a direction to make representation/ submission in writing to the disciplinary authority within 15 days from the date of its receipt failing which it will be presumed that they have nothing to say in their defence and a decision would be taken on merit. They were also called upon to show cause as to why suspension period should not be treated as period not spent on duty. They received the same and submitted their representations. On perusal of the same and also hearing the applicants in O.R., the disciplinary authority returned the DE Cell, Delhi to complete the DE in its right earnest vide Memo dated 28.2.2011 with the observations that the case reflected that a lot of technicalities is involved in the proceedings and thus, make the case complicated. The applicants were made accused on the

disclosure of prime accused Raj Kumar, the Alhmad of Rohini Special Traffic Court, who was caught red handed. PW-II (Inspector M.C. Meena, I.O. of case) cited witnesses to establish corrupt practices of the applicants but they (the witnesses) were not part of D.E. proceedings.

3.12 They further stated that E.O. has carefully gone through the statements of PWs/exhibits/defence statement of the applicants and submitted his findings concluding that the charge framed against the applicant stands proved. The disciplinary authority has carefully gone through the statement of PWs/exhibits/defence statement/findings of E.O., representation submitted by the applicants as well as record placed on file and in the light of facts and circumstances of the case awarded punishment to the applicants by passing reasoned, detailed and speaking order which is well commensurate with the misconduct committee by him.

3.13 They also stated that the appellate authority has carefully gone through the appeal submitted by the applicants and statements of PWs/Exhibits/findings of the E.O. as well as other material/record brought on file. They were also heard in O.R. on 17.8.2012 and during O.R. they said nothing new except they already mentioned in their appeal. During DE proceeding, the E.O. has proved that the applicants were posted as Naib Court in the Rohini Traffic

Court and were disposing off traffic challans illegally after accepting illegal gratification. The appellate authority agreed with the findings of E.O. as well as punishment order of the disciplinary authority and do not find any reason to interfere with punishment order of the disciplinary authority and rejected their appeal.

4. The applicant has also filed rejoinder reiterating the averments made in the OA and denying the contents of the reply filed by the respondents.

5. The main contention of the counsel for the applicant is that producing three witnesses during the supplementary findings as Court Witnesses is an illegal and arbitrary act and is in violation of laid down departmental rules and procedure and is enough to vitiate the departmental enquiry, as the court witnesses are to be called up subsequent to the defence evidence being recorded under Rule 16 (viii) of the Rules *ibid* but here in the present case the court witnesses were called up subsequent to the report of the enquiry officer.

5.1 Counsel further submitted that the applicant was not given any list of witnesses which need to be examined by the Enquiry Officer in supplementary findings and thus deprived the applicants an opportunity of effectively cross-examine the witnesses, as the applicants have a right to know the witness(es) in advance so in order to effectively cross examined the witnesses but the Enquiry Officer failed to give

proper intimation in advance to the applicants regarding the witnesses who would be examined in the supplementary findings and such act vitiates the departmental enquiry.

5.2 Counsel further contented that E.O., disciplinary and appellate authorities are under obligation to consider the statements of the witnesses given in the departmental enquiry but in the present case the statements and the depositions given by the witnesses in the departmental enquiry are ignored and on the contrary, their previously recorded statements have been given weight-age to prove the charge levelled against the applicant or to impose the punishment upon the applicants. Thus the impugned orders are bad in law, as once the witness has come and depose in the departmental enquiry than his deposition in the departmental enquiry has to be considered and not any statement given prior to that but in the present case the deposition of the witnesses who has come and deposed in the departmental inquiry such as Raj Kumar, Gaurav Bammi, Kamal Kishor has been ignored and their previously recorded statements have been given weight-age so in order to prove the charge against the applicants.

5.3 Counsel further submitted that there is neither any specific complaint against the applicants nor is there any evidence of demand and acceptance on the part of the applicants nor any recovery of any money from the applicants

but still the allegation of demand and acceptance of illegal rectification is being proved against the applicants.

5.4 Counsel further submitted that disclosure statement of Raj Kumar cannot be taken as an evidence in the present departmental enquiry to prove the charge against the applicants especially when the said Raj Kumar himself has come and appeared in the departmental enquiry. As such the deposition recorded in the enquiry cannot be ignored as the same is the deposition recorded in the department enquiry. Counsel also submitted that the said disclosure statements given to the police during police custody which has no evidentiary value until and unless the same is corroborated by some independent evidence or the same disclosure results into any recovery than to that extent the same disclosure statement can be relied. The respondents in this case have proved the entire charge of demand and acceptance of illegal gratifications against the applicant on the basis of the disclosure statements which are not corroborated by any independent evidence that has come on record during the departmental enquiry and has further not resulted into any recovery and thus the present departmental inquiry is vitiated.

5.5 Counsel also submitted that the said disclosure statement of Raj Kumar cannot be relied upon in the departmental enquiry to give any finding of guilt against the

applicants and that too, to prove the charge of demand and acceptance of illegal gratification, as to prove the same, there must be a specific evidence which must come on record during the departmental enquiry.

5.6 Another contention of the learned counsel for the applicant is that the Enquiry Officer has given the findings to the disciplinary authority without waiting and giving sufficient opportunity to the applicants for giving the defence statements thus vitiating the departmental enquiry. However, the Enquiry Officer recorded that ample opportunity was being given to the delinquents for submitting the defence statements but the same ample opportunities and reminders were not being proved in the departmental enquiry.

5.7 Counsel also submitted that the deposition of the witnesses given in the departmental enquiry cannot be ignored on the ground that the same witnesses turned hostile or being won over as the same amounts to an arbitrary act and is enough to vitiate the departmental enquiry.

5.8 Counsel further submitted that the impugned orders of the disciplinary authority as well as appellate authority are absolutely non-speaking and mechanical in nature as the present case is a case of no misconduct as that to receive challans from the Naib Courts against receipt on the Rd. Certificates and to make entry in the Summary Trial Register is exclusively duty of the Ahalmad and further to impose fine

on the accused person while the accused is present before him in the Court was the duty of the Magistrate and to realize fine against receipt was the exclusive duty of the Reader of the M.M. The challans when deposited in the Court remains under the custody and care of the Court and cannot be disposed of by other than the M.M. and also in the presence of the accused person. This fact clearly establishes that the applicants are not having any role to play in the disposal of challans and thus the present allegations against the applicants are totally unfounded making the present departmental enquiry as bad in law.

5.9 Lastly counsel submitted that in view of the above submissions, the impugned orders are liable to be quashed by this Tribunal and that the names of the applicants have to be removed from the secret list of doubtful integrity.

6. Counsel for the respondents submitted that list of 3 CWs were prepared by E.O. and served upon the applicants on 11.3.2011 and 14.3.3.2011, the statement of 1st CW was recorded on 22.3.2011, i.e., after the 8 days from the service of list of CWs. As such the applicants were given ample opportunity to prepare their defence well in advance. Moreover, the applicants also cross-examined the CWs and the copies thereof were also provided to them by the E.O.

6.1 Counsel further submitted that the E.O. submitted his supplementary enquiry findings with the observations that

the CWs had not deposed anything about demand and acceptance of money for the disposal of challan also they are main/co-accused with the applicants in FIR No.50/07 P.S. AC Branch, GNCT of Delhi. Hence, their depositions cannot be relied upon but from the deposition of CW-1, CW-2 & CW-3, it has been proved that the demand of the applicants is direct in view of the disclosure statements Ex.PW-11/C, Ex.PW-11/D & Ex.PW-11/E respectively. Counsel also submitted that in view of the facts came on file the preponderance of probability of guilt for indulgence in the corrupt practices of both the applicants has been substantiated. The supplementary defence statement submitted by the applicants does not inspire any confidence as the court witnesses have been examined properly in presence of the applicant and the defence assistant.

6.2 Counsel for the respondents further submitted that during the DE proceedings, it has been established that on the complaint of one Shri Varun Rana, a raid was conducted by A.C. Branch and one Raj Kumar, Ahalmad was caught red-handed while demanding, accepting and obtaining Rs.2000/- as bribe. During the investigation, Inspr. M.C. Meena arrested Ahalmad Raj Kumar and recovered 36 challans, D/L, RC from left pant pocket and Rs.1890 from right pant pocket and his disclosure memo was prepared in which he stated that he used to dispose traffic and STA

challans with the help of STA Naib Court Const. Naresh Kumar, Peon Sunil, Traffic Naib Court Ct. Mannu Ran and Ct. Rajesh Kumar, i.e.. applicants in half of the amount of challan on their own level. He used to pay Rs.1200/- per day to traffic Naib Court and Rs.700/- per day to STA Naib Court and peon. If the Naib Court takes challan for disposal himself then he pays $\frac{1}{4}$ of the challan amount to him and $\frac{1}{4}$ of the challan he keeps with him and challan is disposed in this way. On 30.11.2007, STA Ct. Naresh Kumar and peon Sunil were arrested and their disclosure memos were prepared in which they have corroborated the disclosure memo of Ahalmad Raj Kumar. On 3.11.2008, PW-5 produced photocopy of RC of his company vehicle No.DL-1M-0856 to PW-II which was taken into possession and his statement was recorded by PW-11 in which PW-5 has stated that the original RC of the vehicle was given to him by Ct. Rajesh Kumar on 7.11.2007 after taking Rs.2000/- from him, PW-5 also produced photocopy of his RC to PW-11 which was taken into possession. On 17.3.2008 statement of PW-10 was recorded and produced his original D/L and stated that his original D/L was given back to him by Ct. Mannu Rana on 28.11.2007 after taking Rs.2000/- from him and the same was taken into possession. On 19.5.2009, Shatrughan Kumar Singh S/o Sh. Trilok Prasad Singh r/o Flat No.39, Priya Appts, Sector-1, Rohini produced his original D/L and stated that his original D/L was given back to him by St. Rajesh

Kumar on 28.11.2007 in Rohini Court after taking Rs.400/- from him and the same was taken into possession. On 8.9.2008, Ct. Rajesh Kumar was arrested and his disclosure memo was prepared. On 5.9.2008, Ct. Mannu Rana was arrested and his disclosure memo was prepared. Both the applicants have corroborated the version of accused Ahalmad Raj Kumar.

6.3 Counsel further submitted that Rule 15 (2) of Rules *ibid* provides that cases in which a preliminary enquiry discloses the commission of a cognizable offence by a Police Officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the competent authority concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. In this matter, a criminal case vide FIR No.50/07 u/s 7/13 POC Act r/w 120-B IPS P.S. A.C. Branch has already been registered against the applicants and as such permission under Section 15 (2) became useless and hence, the same was not obtained from the competent authority.

7. After hearing learned counsel for the parties and perusing the material available on records, we observe that a joint departmental inquiry was initiated against the applicants on the basis of disclosure statement made by one Raj Kumar, Ahalmad in the Court of learned Special MM,

Delhi, who was arrested red-handed by Anti Corruption Branch, GNCT of Delhi pursuant to complaint received from one Shri Varun Rana that Shri Raj Kumar, the Ahalmad in the said Court was demanding Rs.2000/- from him for clearing four traffic challans (the total amount of challans was Rs.4700/-) at his own level and the said Ahalmad also assured the complainant that the challans would not remain pending in the Court after paying Rs.2000/-. In the disclosure statement, the accused Raj Kumar disclosed that he along with other staffs, including applicants, was involved in the corrupt practice of disposing off the traffic challans illegally at their own as they used to take half of the amount of fine (as per penal sections mentioned in the challan) from the violator or advocate and then distribute it among themselves. The said disciplinary enquiry was concluded by the Enquiry Officer vide his report dated 22.11.2010 concluding that the charge levelled against the applicants stands proved.

8. We have minutely examined the said inquiry report and found that the Enquiry Officer observed that "They neither produced any DWs nor submitted their defence statement in spite of sufficient opportunity given to them. It appears that they have nothing to say in their defence. Accordingly examination of DWs has been dropped." Further the Enquiry Officer observed in the Inquiry Report below the heading

'DISCUSSION OF EVIDENCE' that "The delinquent Ct. Rajesh submitted list of 2 DWs but other delinquent Ct. Mannu Rana did not submitted list of DWs and also not produced any DWs and they also not submitted their defence statement in spite of ample opportunity given to them." (page 37 of the paperbook). As such the aforesaid observations of the Enquiry Officer are contrary on the face of it. However, the Enquiry Officer examined only Prosecution Witnesses and held that the charge levelled against the applicants is proved.

9. On receipt of the aforesaid inquiry report, the disciplinary authority served a copy of the same to the applicants to enable them to make their representations against the same. The applicants submitted their representations against the aforesaid report of the Enquiry Officer. The applicants were also called in O.R. by the disciplinary authority and after hearing the applicants, the disciplinary authority returned the DE file to DE Cell, Delhi to complete the DE in its right earnest vide Memo dated 28.2.2011. On receipt of DE file, the Enquiry Officer conducted the supplementary enquiry by examining three CWs in which one of the CWs is the accused Raj Kumar on the basis of his disclosure statement, the applicants were dealt with departmentally. The said supplementary inquiry notice was also served upon the applicants. After examining the said CWs, the Enquiry Officer returned the finding again

that charge against the applicants stand proved. However, the Enquiry Officer in the said supplementary findings observed as follows:-

“The court witnesses have not deposed anything about demand and acceptance of money for the disposal of challan also they are main/co-accused with the delinquents in FIR No.50/07 PS AC Branch GNCT of Delhi. Hence, their depositions can not be relied upon. **But, from the deposition of CW-1, CW-2 & CW-3, it has been proved that the demand of the delinquents is direct in view of the disclosure statement Ex.PW-11/C, Ex.PW-11/D and Ex.PW-11/E respectively. In view of the facts came on file the preponderance of probability of guilt for indulgence in the corruption by the both delinquents has been substantiated.** The supplementary defence statement submitted by the delinquents does not inspire any confidence as the court witnesses have been examined properly in presence of the delinquents and the defence assistant.”

The aforesaid findings returned by the Enquiry Officer are contrary on the face of it. As on the one hand, Enquiry Officer observed that **The court witnesses have not deposed anything about demand and acceptance of money for the disposal of challan** and on the other hand, E.O observed that **deposition of CW-1, CW-2 & CW-3, it has been proved that the demand of the delinquents is direct in view of the disclosure statement Ex.PW-11/C, Ex.PW-11/D and Ex.PW-11/E respectively.** The said conclusion arrived at by the Enquiry Officer is not sustainable in the eyes of law as the same is not based on the statement of CWs but actually based on the earlier disclosure statements recorded in the initial departmental enquiry proceedings.

10. The aforesaid aspect has also been raised by the applicants by filing their representations against the said supplementary findings. However, this aspect of the representation has not been dealt with by the disciplinary authority rather the disciplinary authority on the basis of conclusion arrived at by the Enquiry Officer in the initial inquiry report and subsequent supplementary findings agreed with the same and imposed the aforesaid punishment upon the applicants. Again, this aspect has also not been dealt with by the appellate authority while rejecting the appeal preferred by the applicants.

11. It is relevant to mention here that this Court is aware of the limitation of this Tribunal in the matters of disciplinary proceedings as held by the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. P.Gunasekaran*** (2015(2) SCC 610), wherein the Hon'ble Supreme Court has observed as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;

- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.”

(emphasis supplied)

12. In view of the above facts and circumstances of the case, this Court is not inclined to go into the other aspects of the matter.

13. In view of the above facts and circumstances of the case and for the foregoing reasons, the Inquiry Report, Supplementary Findings as well as orders dated 19.7.2011 and 30.8.2012 of the disciplinary authority and appellate authority respectively are quashed. The matter is remitted back to the disciplinary authority to proceed afresh in the

matter from the stage of issuance of charge memo to the applicants and conclude the same expeditiously in accordance with the provisions of rules and law on the subject.

14. In the result, the present OA is allowed in terms of the observations made in the preceding paragraph. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/