

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1489/2014

Reserved on 07.11.2019
Pronounced on: 26.11.2019

**Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Jang Bahadur (Constable),
Aged about 46 years,
S/o Dariya Ram,
R/o H.No. 488, Gali No. 3,
Ambedkar Nagar Extn., Hyderpur,
Delhi.

... Applicant

(By Advocate: Mrs Priyanka Bhardwaj for Mr. M.K.Bhardwaj)

VERSUS

Commissioner of Police & Ors. Through:

1. The Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. The Additional Commissioner of Police,
Traffic, Police Bhawan, Asaf Ali Road,
Delhi.
3. The Dy. Commissioner of Police,
Traffic (ER), Police Headquarter,
I.P. Estate, Delhi. ... Respondents

(By Advocate: Mr. Amit Yadav for Mr. Ankur Chhibber)

O R D E R

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Ms. Priyanka Bhardwaj for Mr.M.K.Bhardwaj counsel for applicant and Mr.Amit Yadav for Mr. Ankur Chhibber, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(i) To quash and set aside impugned punishment order dated 20.02.2013 (Annexure A-1) and appellate authority order dated 27.12.2013 (Annexure A-2) with direction to the respondents to give all consequential benefits to the applicant including arrears etc. by treating the suspension period as spent on duty for all purposes.
- (ii) To declare the action of the respondents in holding departmental action against the applicant on the basis of false allegations as illegal and unjustified and direct the respondents to remove the name of the applicant from the list of persons of doubtful integrity.
- (iii) To quash and set aside the order dated 12.01.2012 (A-3)
- (iv) To award exemplary costs in favour of the applicant.
- (v) To pass such other and further orders, which their lordships of this Hon’ble Tribunal deem fit, and proper in the existing facts and circumstances of the case.”

3. The relevant facts of the case are that on a complaint regarding demanding of Rs.4000/- from one Mohd. Ikram S/o Deen Mohd. R/o 38/5/2 Aram Park of Shastri Nagar, Delhi for entry of his Gramin Sewa vehicle operating on the permitted route on Vikas Marg, a summary of allegation was issued to four delinquent employees, including the applicant. The summary of allegation is extracted below:-

“It has been alleged that one, Mohd. Ikram, S/o Deen Mohd., R/o 38/5/2 Aram Park, Shastri Nagar, Delhi-31, owns a Gramin Sewa vehicle DL 2W 0052 and operates it on the permitted route via Laxmi Nagar ‘T’ point on Vikas Marg. He faced difficulties in operating the Gramin Sewa because of the traffic staff posted at the Laxmi Nagar ‘T’ point. Mohd. Ikram alleged that the staff demanded Rs.4000/- as entry money for smooth operation of his Gramin Sewa via the Laxmi Nagar T Point.

On 10-11-11 as per the directions of senior officers, a team comprising of Insp. Rajendra Prasad D-3363 and staff along with complainant Mohd. Ikram and witness Sh. Ashawani Kumar Singh was constituted. It was decided that Mohd. Ikram would give Rs.4000/- to

the staff of Laxmi Nagar 'T' Point on Vikas Marg as entry money and witness Sh.Ashwani Kumar would accompany the complainant to the traffic point. As decided Mohd. Ikram entered the traffic booth and gave entry money (Rs.4000/-) to the traffic staff. Ct. Jang Bahadur No. 5966/T accepted Rs.4000/- as entry money, from the complainant inside the Laxmi Nagar 'T' Point Traffic Booth on 10-11-11 at around 1545 hours in the presence of ZO SI Prem Chand 4697/D, Ct. Sagar Mal 1212/T and Ct. Pankaj Sharma 2448/T.

The above act on the part of SI Prem Chand 4697/D, Ct.Jang Bahadur 5966/T, Ct. Sagar Mal 1212/T and Ct. Pankaj Sharma 2848/T amounts to grave misconduct, lack of integrity, indulgence in corrupt practice and misuse of their official position which re them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules 1980."

4. Along with the summary of allegation, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and the relevant rules regarding the holding of the departmental enquiry conducted the joint departmental enquiry and examined PW-1 to PW-7 and DW-1 to DW-13 and after discussing the evidence and analyzed the deposition of all the witnesses came to the conclusion that the charges leveled against the applicant were partly proved vide his inquiry report dated 11.12.2012. The relevant portion of the discussion of the Inquiry Officer is extracted below:-

"I have carefully gone through the evidence on record, the depositions made by the PWs and DWs as well as the defence statement of the delinquents.

PW-1 and PW-2 have proved the postings of delinquents in Gandhi Nagar Traffic Circle. PW-3 proved that on 10.11.11 all the delinquents were deployed at Laxmi Nagar 'T' Point. PW-4 proved that a PRG raid was conducted on the above said Traffic point and the demanded money i.e. Rs.4000/- were recovered from the possession Ct. Jang Bahadur. PW-5 proved that on the day of the raid he was called by Inspector PRG at the

above said point and informed about the raid he also deposed that he also depute fresh staff in place of the delinquents. PW-6 also proved the PRG raid was conducted on the delinquents and the demanded money was recovered from the possession of Ct. Jang Bahadur. PW-7 deposed that on the directions of senior officers Inspector PRG contacted him and the raid was conducted on the delinquents. However, PW-7 denied about his involvement in the raid and he further deposed that he was angry with the delinquent SI Prem Chand because he prosecuted his Gramin Sewa vehicle, therefore, he agreed to put his signatures on the papers prepared by Inspector PRG.

The delinquents produce a total 13 witnesses in their defence. All the DWs in their depositions mainly cast aspect on the character of complainant Ashwani Kumar Singh and his motive behind his complaint made against the delinquents. DW-1 deposed that no written complaint from Mohd. Ikram was received in the office of ACP/T/PRG. DW-2 deposed that on 10/11/11 no departure DD entry was made by Inspector PRG. DW-3 deposed that he was an insurance agent and was present in the Traffic booth for collecting the premium amount from Ct. Jang Bahadur when the raid was conducted. DW-4 deposed that she was also a Gramin Sewa Operator and was present in the Traffic booth to deliver the spectacles ordered by SI Prem Chand. She also deposed that the traffic staff never demanded entry fee from her being a Gramin Sewa Operator. DW-5 deposed that he was also co-incidentally present at the time of raid and he had known the traffic staff previously and the traffic staff never demanded any money from him. DW-6 deposed that he owns a Gramin Sewa and used to ply it in the area. He also deposed that SI Prem Chand had prosecuted the Gramin Sewa belonging to the brother of Ashwani Kumar Singh in the past. DW-7, W-8, DW-9, DW-10, DW-11, DW-12 and DW-13 have also cast aspect ion on the character of complainant Ashwani Kumar Singh.

It has been proved from the depositions of DWs that ZO SI Prem Chand had challenged the Gramin Sewa no.DL-2W-4959 belonging to the real brother of Ashwani Kumar Singh on 22.04.2011 and Ashwani Kumar Singh had reached at the spot, created ruckus and called the PCR and local police. He also threatened to teach SI Prem Chand and other staff a lesson. It is also proved that ZO SI Prem Chand had also challaned Gramin Sewa DL-2W-4885 of Yasin Malik a close relative of Mohd. Ikram on 09.11.2011 and both were court Challan.

In their defence statement the delinquents mainly pleaded that the money Rs.4000/-recovered from the possession of Const. Jang Bahadur was his personal money which the delinquent had withdrawn from ATM of Axis Bank, Vikas Marg, Laxmi Nagar Delhi on 09.11.2011 to pay installment of the LIC premium to DW-3 on 10.11.2011. As DW-3 had deposited the premium from his own pocket on the request of the Jang Bahadur. The delinquent Ct. Jang Bahadur also produced the certified statement of his Axis bank A/c No. 120010100218887. DW-3 Anjani Kumar had come to collect the premium amount of LIC on 10.11.2011 at traffic booth at around 3.10 pm. No other staff of the Laxmi Nagar T Point except Ct. Jang Bahadur was present inside the booth at that time and other two delinquents Cts were present at the traffic light. SI Prem Chand had not reached by that time. He came later on. They further pleaded that Mohd Ikram (Main Complaint) has refuted the claim of his being present alongwith them. He has clearly stated that he was not present on 10.11.2011 at Laxmi Nagar T Point. Ashwani Kumar Singh used Ikram as a tool to obtain signatures on the documents Ex.PW-4/A&B on 14.11.2011 on the pretext of getting suspended the traffic staff of Laxmi Nagar T Point, who had challenged their vehicles. There is clear motive of false implication of SI Prem Singh and other co-delinquents by Ashwani Kumar Singh and others.

On perusal of the defence statements of the delinquents and depositions made by DWs it is proved that Ashwani Kumar Singh has a dubious character who had falsely complained against many police personnel. This fact has also been admitted by him in his deposition in the DE proceedings. He also avoided giving reply of all the specific/pointed questions knowingly and intentionally due to fear getting exposed.

On the other hand despite the fact that the main complainant Mohd. Ikram has refuted to his involvement in the raid and some procedural lapse remained in conducting the raid on the delinquents. It has been proved from the depositions of other PWs that a PRG raid was conducted on the delinquents and Rs.4000/- were recovered from the possession of one of the delinquents i.e. Ct.Jang Bahadur. The plea regarding the presence of only Ct. Jang Bahadur in the traffic booth at the time of raid is also not found tenable because it does not seem possible than an individual can take entry fee/bribe at his own without the involvement of other staff deployed at that point.

CONCLUSION

Thus in view of the above discussion on the basis of record available on file and depositions made by prosecution witnesses and defence witnesses produced by the delinquents I am unable to persuade myself to take any lenient view in the matter and find that the charge against the delinquents SI Prem Chand No. 4697-D, Const. Jang Bahadur No. 5966/T, Const. Sagar Mal, No. 1212/T and Const. Pankaj Sharma, No. 2848/T stands partly proved."

The inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority after carefully going through the findings of the inquiry officer and the deposition of the witnesses in the inquiry proceedings and also personally hearing all the delinquents employees, including the applicant on 8.02.2013 imposed a penalty of forfeiture of three years approved service permanently entailing reduction in his pay from Rs.10660+28700 to Rs. 9510+2800 vide order dated 20.02.2013. The relevant portion of the order of the disciplinary authority is extracted below:-

"The undersigned have carefully gone through the findings submitted by the Enquiry Officer. During the DE proceedings, 08 PWs were examined. PW-1, HC Geetanand No. 01/T (SIP Branch/Traffic) proved the posting of the Constables. PW-2, Ct. Hardeep No. 4802-T from HAE-Branch/Traffic proved the posting of SI Prem Chand No. 4697-D. PW-3, HC Harbans Singh No. 494-T, MHC Gandhi Nagar Traffic circle proved that the defaulters were deployed at that point as per duty roster. PW-4, Insp. Rajender Prasad, TI/PRG, reiterated the same facts as mentioned in the allegations. He again clarified that at the time of recovery, the other traffic staff was present inside the booth and the 'entry money' was accepted by Ct.Jang Bahadur. During cross-examination, he stated that no written complaint was given by the complainant earlier and handing over memo was prepared in the morning at 10 AM, which was signed by the complainant. PW-5, Insp. Daya Nand deposed that on 10.11.2011, he was posted as TI/GNC. On that day, Insp./ Rajender Prasad, TI/PRG called him at about 3.30 PM. During cross-examination, he stated that earlier he contacted SI Prem Chand and directed him to reach his duty point. PW-6, Ct. Rajneesh No. 5609-T from PRG Cell supported the allegations leveled against the defaulters. During cross- examination by

the defaulters, he mentioned that he was 10 feet away from the booth, when the raid was conducted. PW-7, Sh. Ashwani Kumar Singh fully supported the prosecution and reiterated the same as mentioned in the allegations. During cross-examination by the defaulters, he stated that on 9.11.2011, he had given prior information/complaint to the senior traffic officers and so Insp. PRG contacted him on 9.11.2011. PW-8, Sh. Mohd Ikram s/o Sh. Deen Mohd. retracted from his earlier statement and mentioned that on 10.11.2012, he neither met any traffic police personnel nor went to Laxmi Nagar T-point. He also mentioned that he was little angry with SI Prem Chand, therefore, he signed all the documents without going through but the defaulters never demanded any money from him. He mentioned that handing over memos seizure memo and photocopies of currency notes were signed by him on the behest of Sh. Ashwani Kumar on 14.11.2011 in PRG office.

After examination of prosecution witnesses, charge was served upon the defaulters on 19.10.2011 and thereafter, defaulters produced 13 defence witnesses. DW-1, Ct. Hari Singh No. 894-T produced complaint register and mentioned that as per register no complaint received in PRG office. DW-2, HC Ashwani Kumar No. 880-T produced the roznamcha and proved that there is no departure of Insp. Rajender Prasad mentioned. DW-3, Sh. Anjani Kumar s/o Sh. Krishan Kant mentioned that he is an Insurance Agent. On 9.10.2011, Ct. Jang Bahadur called him that he has received the salary and requested him to collect the premium amount. On 10.11.2011, he reached around 3.10 PM, but Ct. Jang Bahadur was busy on duty. He directed him to sit in the booth and went to tea stall for fetching the tea. When, he saw that tea stall owner has come, Ct. Jang Bahadur also came inside the booth. At the same time, one lady came and brought the spectacles of ZO, SI Prem Chand. Ct. Jang Bahadur told her that ZO is on rest. He offered a cup of tea to her. In the meantime, 2-3 persons in civil dress came in the Govt. Gypsy and told Ct. Jang Bahadur and other traffic person to accompany them. DW-4, Smt. Rani Mishra w/o Sh. Kedar Mishra deposed that she owns a Gramin Sewa No. DL-2W-45354 plying in Mayur Vihar. Her husband is having an optical shop at Mayur Vihar and she came to deliver the spectacle to SI Prem Chand. The traffic staff told her to wait for some time as SI was on night duty and expected to back shortly. She reiterated the same story as mentioned by DW-3. DW-5, Sh. Daya Nand mentioned that he has transport business. On 10.11.2011, he came to Laxmi Nagar Traffic booth as he had known traffic staff previously. He mentioned the same story narrated by the other DWs. He also mentioned that he often ply his vehicle in Laxmi Nagar area but SI Prem Chand and his staff never demanded any money from him. DW-6, Sh. Sultan Khan s/o Sh. Usman Khan mentioned that he is a permit holder of Gramin Sewa. He mentioned about the incident on 22.4.2011, where SI Prem Chand prosecuted the GSV belongs

to the brother of Sh. Ashwani Kumar and Sh. Ashwani Kumar allegedly threatened the ZO. DW-7, HC Suresh Kumar No. 325-East, PS Jagat Puri brought the criminal record of Riyazuddin. DW-8 HC Dharmender Kumar No. 621-E from PS Geeta Colony brought the criminal record of Mohd Ikram. DW-9, HC Gulab Singh No. 1491-T from Pahar Ganj circle and ASI Ramesh Lal No. 3558-E from PS Preet Vihar deposed the story narrated by DW-6. DW-11, HC Lal Ram No. 3673-T brought the original challan book and produced copy of challan No. 336167 dated 22.4.2011. DW-12, Insp. Anil Kumar No. D-3477, PTS Wazirabad deposed that Sh. Ashwani Kumar is in the habit of making false complaint against traffic staff. DW-13, Sh. Gorakh Shah Mishra deposed that he is a tea stall owner and on that day he was in the booth to serve the tea. He also reiterated the same as mentioned by the DW-3, 4 & 5.

From the depositions of PWs/DWs, it is transpired that PW-1 to PW-3 are formal witnesses. PW-4, Insp/PRG, PW-6 & PW-7 fully supported the allegations and it is very clear that Ct. Jang Bahadur accepted the money from the complainant in the presence of other defaulters. However, PW-8 has retracted from his earlier statement and mentioned that he was little angry with SI Prem Chand, therefore, he signed all the documents without going through. Statements of DW-1 & DW-2 are just formal. The statements of DW-3, 4, 5 & 13 cannot be believed as in the PRG report there are nobody found in the booth when the PRG reached there. If, they were in the booth then why the defaulters not mentioned the facts in their statements given before the PRG. They clearly denied any statements during the PRG enquiry and created concocted story later on. Statement of DW-3 and Ct. Jang Bahadur cannot be believed as the same notes which were mentioned in the handing over memo recovered from Ct. Jang Bahadur. Ct. Jang Bahadur and complainants also signed in the memos. Moreover, DW-3, DW-4 & DW-5 are the owners or plying the GSVs in that area, therefore, they are interested parties. However, other DWs only proved that Sh. Ashwini Kumar has threatened SI Prem Chand on 22.4.2011 and complainants have criminal records. The defaulters have tried to show the presence of many DWs (private persons) in the booth, but they showed their presence outside the booth which is also not acceptable in any manner.

In view of the above mentioned discussion and considering overall facts, I found that the pleas taken by the defaulters are not convincing at all. There is no doubt that the same notes mentioned in the handing over memo were found in the hands of Ct. Jang Bahadur in the presence of all other defaulters. The presence of SI Prem Chand also shows that he is involved in the matter and also lack of supervision on his part. The other 02 Constables are also actively involved in such corrupt practice. Therefore, I, Dy. Commissioner of Police/Traffic (ER), Delhi hereby awarded punishment of forfeiture of 03 (three) years approved service permanently to

Ct. Jang Bahadur No. 5966-T entailing subsequent reduction in his pay from Rs. 10660+2800 to Rs. 9510+2800 and punishment of forfeiture of 02 (two) years approved service temporarily for a period of two years each to other defaulters entailing subsequent reduction in the pay of SI Prem Chand No. 4697-D from Rs.12710+4200 to Rs. 11730+4200, in the pay of Ct. Sagar Mal No. 1212-T from Rs. 7260+2000 to Rs. 6720+2000 and in the pay of Ct. Pankaj Sharma No. 2848-T from 9430+2400 to Rs.8740+2400. The defaulters are hereby reinstated from suspension with immediate effect. Their suspension period from 10.11.2011 to date of issue of this order is decided as period not spent on duty for all intents and purposes...."

The applicant filed an appeal. The appellate authority also went through the entire deposition of all the witnesses and the grounds raised by the applicant in his appeal and also hearing the applicant personally in orderly room rejected the appeal vide order dated 27.12.2013. The relevant portion of the order passed by the appellate authority is extracted below:-

"The disciplinary authority had carefully gone through the findings submitted by the Enquiry Officer. During the DE proceedings, 08 PWs were examined. PW-1, HC Geetanand No. 01/T (SIP Branch/Traffic) proved the posting of the Constables. PW-2, Ct. Hardeep No. 4802-T from HAE-Branch/Traffic proved the posting of SI Prem Chand No. 4697-D. PW-3, HC Harbans Singh No. 494-T, MHC Gandhi Nagar Traffic circle proved that the defaulters were deployed at that point as per duty roster. PW-4, Insp. Rajender Prasad, TI/PRG, reiterated the same facts as mentioned in the allegations. He again clarified that at the time of recovery, the other traffic staff was present inside the booth and the 'entry money' was accepted by Ct.Jang Bahadur. During cross-examination, he stated that no written complaint was given by the complainant earlier and handing over memo was prepared in the morning at 10 AM, which was signed by the complainant. PW-5, Insp. Daya Nand deposed that on 10.11.2011, he was posted as TI/GNC. On that day, Insp./ Rajender Prasad, TI/PRG called him at about 3.30 PM. During cross-examination, he stated that earlier he contacted SI Prem Chand and directed him to reach his duty point. PW-6, Ct. Rajneesh No. 5609-T from PRG Cell supported the allegations leveled against the defaulters. During cross-examination by the defaulters, he mentioned that he was 10

feet away from the booth, when the raid was conducted. PW-7, Sh. Ashwani Kumar Singh fully supported the prosecution and reiterated the same as mentioned in the allegations. During cross-examination by the defaulters, he stated that on 9.11.2011, he had given prior information/complaint to the senior traffic officers and so Insp. PRG contacted him on 9.11.2011. PW-8, Sh. Mohd Ikram s/o Sh. Deen Mohd. retracted from his earlier statement and mentioned that on 10.11.2012, he neither met any traffic police personnel nor went to Laxmi Nagar T-point. He also mentioned that he was little angry with SI Prem Chand, therefore, he signed all the documents without going through but the defaulters never demanded any money from him. He mentioned that handing over memos seizure memo and photocopies of currency notes were signed by him on the behest of Sh. Ashwani Kumar on 14.11.2011 in PRG office.

After examination of prosecution witnesses, charge was served upon the defaulters on 19.10.2011 and thereafter, defaulters produced 13 defence witnesses. DW-1, Ct. Hari Singh No. 894-T produced complaint register and mentioned that as per register no complaint received in PRG office. DW-2, HC Ashwani Kumar No. 880-T produced the roznamcha and proved that there is no departure of Insp. Rajender Prasad mentioned. DW-3, Sh. Anjani Kumar s/o Sh. Krishan Kant mentioned that he is an Insurance Agent. On 9.10.2011, Ct. Jang Bahadur called him that he has received the salary and requested him to collect the premium amount. On 10.11.2011, he reached around 3.10 PM, but Ct. Jang Bahadur was busy on duty. He directed him to sit in the booth and went to tea stall for fetching the tea. When, he saw that tea stall owner has come, Ct. Jang Bahadur also came inside the booth. At the same time, one lady came and brought the spectacles of ZO, SI Prem Chand. Ct. Jang Bahadur told her that ZO is on rest. He offered a cup of tea to her. In the meantime, 2-3 persons in civil dress came in the Govt. Gypsy and told Ct. Jang Bahadur and other traffic person to accompany them. DW-4, Smt. Rani Mishra w/o Sh. Kedar Mishra deposed that she owns a Gramin Sewa No. DL-2W-45354 plying in Mayur Vihar. Her husband is having an optical shop at Mayur Vihar and she came to deliver the spectacle to SI Prem Chand. The traffic staff told her to wait for some time as SI was on night duty and expected to back shortly. She reiterated the same story as mentioned by DW-3. DW-5, Sh. Daya Nand mentioned that he has transport business. On 10.11.2011, he came to Laxmi Nagar Traffic booth as he had known traffic staff previously. He mentioned the same story narrated by the other DWs. He also mentioned that he often ply his vehicle in Laxmi Nagar area but SI Prem Chand and his staff never demanded any money from him. DW-6, Sh. Sultan Khan s/o Sh. Usman Khan mentioned that he is a permit holder of Gramin Sewa. He mentioned about the incident on 22.4.2011, where SI Prem Chand prosecuted the GSV belongs

to the brother of Sh. Ashwani Kumar and Sh. Ashwani Kumar allegedly threatened the ZO. DW-7, HC Suresh Kumar No. 325-East, PS Jagat Puri brought the criminal record of Riyazuddin. DW-8 HC Dharmender Kumar No. 621-E from PS Geeta Colony brought the criminal record of Mohd Ikram. DW-9, HC Gulab Singh No. 1491-T from Pahar Ganj circle and ASI Ramesh Lal No. 3558-E from PS Preet Vihar deposed the story narrated by DW-6. DW-11, HC Lal Ram No. 3673-T brought the original challan book and produced copy of challan No. 336167 dated 22.4.2011. DW-12, Insp. Anil Kumar No. D-3477, PTS Wazirabad deposed that Sh. Ashwani Kumar is in the habit of making false complaint against traffic staff. DW-13, Sh. Gorakh Shah Mishra deposed that he is a tea stall owner and on that day he was in the booth to serve the tea. He also reiterated the same as mentioned by the DW-3, 4 & 5.

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In view of the above mentioned discussion and considering overall facts, the disciplinary authority found that the pleas taken by the appellants are not convincing at all. There is no doubt that the same notes mentioned in the handing over memo were found in the hands of Ct. Jang Bahadur in the present of all other appellants. The presence of SI Prem Chand also shows that he is involved in the matter and also lack of supervision on his part. The other 02 Constables are also actively involved in such corrupt practice. Therefore, disciplinary authority awarded punishment of forfeiture of 03 (three) years approved service permanently to Ct. Jang Bahadur No. 5966-T entailing subsequent reduction in his pay from Rs. 10660+2800 to Rs. 9510+2800 and punishment of forfeiture of 02 (two) years approved service temporarily for a period of two years each to other defaulters entailing subsequent reduction in the pay of SI Prem Chand No. 4697-D from Rs. 12710+4200 to Rs. 11730+4200, in the pay of Ct. Sagar Mal No. 1212-T from Rs. 7260+2000 to Rs. 6720+2000 and in the pay of Ct. Pankaj Sharma No. 2848-T from 9430+2400 to Rs. 8740+2400. The appellants were reinstated from suspension with immediate effect. Their suspension period from 10.11.2011 to date of issue of this order was decided as period not spent on duty for all intents and purposes vide order No. 2218-38/HAP/T(D-1/ER) dated 20.02.2013. Hence these appeal.

I have carefully considered the appeal in the light of facts and circumstances of the case, material available on file and also heard them in person. During the DE proceeding after the depositions of PWs/DWs it is clearly proved that Const. Jang Bahadur accepted Rs. 4000/- from Mohd. Ikram as entry money inside the Laxmi Nagar T- Point Traffic Booth on 10.11.2011 at around 1545 hours in the presence of ZO/SI Prem Chand No. 4697-D and Const. Sagar Mal No 1212/T. The plea of the appellants that the complainant is habitual of sending false complaint against police officers is not a plausible reason to

prove their innocence in the instant case. The other case advanced by the appellants that all the allegations are false and fabricated, have no merit. The disciplinary authority after carefully going through the evidence on DE file and written/oral submissions of the appellants haqs imposed the punishment.

The appellant Constable Jang Bahadur was apprehended by PRG team while demanding and accepting illegal entry money from the complainant. Thus his appeal is rejected. Having regard to the facts & circumstances of the case in respect of other appellants, SI Prem Chand No. 4697/D, Constable Sagar Mal No. 1212/T and Constable Pankaj Sharma No. 2848/T (Now 2197/PCR), I am inclined to reduce the punishment of forfeiture of 02 (two) years approved service permanently for a period of two years each to that of forfeiture of 01 year approved service temporarily for a period of one year each to them..."

6. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence and she further contended that the inquiry officer has not appreciated the deposition of some of the witnesses and therefore, the enquiry report is perverse and requires to be set aside. In support of her contention, the counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of **Kuldeep Singh Vs. Commissioner of Police and Others** (1999) 2 SCC 10) and the judgment of Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in the case of **Sukhdeo Laxman Parale Vs. State of Maharashtra, through Anti Corruption Bureau, Yavatmal, District Yavatmal** (Criminal Appeal No. 597/2003).

7. The counsel for the respondents equally vehemently and strenuously contended that the Inquiry Officer has considered and discussed in detail the deposition of each of the seven (7) prosecution witnesses and he has also discussed the deposition of all the 13 defence witnesses, as could be seen from the above extracted portion of the

inquiry report and he further submitted that this Tribunal after considering in detail the identical submissions in the case of one of the four delinquents employees, namely, Constable Pankaj Sharma Vs. UOI through Home Secretary, Ministry of Home Affairs and Others (OA 2177/2014) vide order dated 27.01.2015 dismissed the OA. He further submitted that the reasoning given by the Co-ordinate Bench in OA No. 2177/2014 requires to be followed by this Bench. The relevant portion of the order is extracted below:-

“9. We have considered the submissions made on both sides and also perused the record. The object and scope of judicial review is different from that of an appeal. It is well settled legal position that in the matter of a departmental proceeding the scope of judicial review is limited and confined to the decision making process but not against the decision itself. It is limited only to correct the errors of law or procedural error, if any, leading to manifest injustice or violation of natural justice. It is equally well settled that while undertaking judicial scrutiny or review, the evidence on record is not to be re-appreciated unless the same is found to be perverse. The Hon’ble Apex Court in B.C. Chaturvedi V Union of India and Others (JT 1995 (8) SC 65) in para 12 of the judgment held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are 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 officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its 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 or 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 .”

10. Therefore, unless it is found that the conclusion or finding recorded by the disciplinary authority is based on no evidence or the finding is so unreasonable that no prudent person would have ever reached the same, the same cannot be interfered in judicial review. Similarly, the order of the Disciplinary Authority and the Appellate Authority cannot be interfered with unless it is found that the proceeding against the delinquent officer was held in a manner inconsistent with the Rules of natural justice or in violation of statutory rules prescribing the procedure of inquiry.

11. Similar view was reiterated by the Apex Court in Chairman cum Managing Director, Coal India Limited and Anr. V Mukul Kumar Choudhuri & Ors (AIR 2010 SC 75), wherein, their Lordships did not agree with the view taken by the High Court and held that it is not open to the courts to examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision making process. Therefore, in view of the enunciation of law by the Apex Court in a judicial review, the finding recorded by the Enquiry Officer cannot be reappraised like an appeal and reach its own conclusion as the judicial review is not against the decision but it confines only to the decision making process. Therefore, where no procedural illegality or irregularity is noticed, it has to be held that the charges against the delinquent stood proved.

12. The learned counsel for the applicant could not point out any procedural error or irregularity in conducting the departmental inquiry, nor could be point out any finding against the evidence on record, nor it is his case that opportunity to defend the charge was not afforded to the applicant. Even the punishment qua the charge, cannot be said to be harsh or unreasonable. Rather we find that the respondents have taken a very lenient view in awarding the punishment. The Apex Court has also held that in cases involving corruption, there cannot be any other punishment than that of dismissal from service. Reference in this connection be made to Municipal

Committee, Bahadurgarh v Krishan Behari and Others (1996) 2 SCC 714). However, since in the instant case, the inquiry officer has found that the charge is proved partly, and further the amount of Rs.,4000/- alleged to be paid as illegal gratification was recovered from the possession of another delinquent, the disciplinary authority rightly took a lenient view and inflicted the punishment of forfeiture of two years approved service temporarily for a period of two years, which was reduced to that of forfeiture of one year s service temporarily for a period of one year by the appellate authority.

13. Having considered all aspects of the matter, we do not find any scope for interference either in the departmental proceeding or the punishment awarded. Hence, this Application fails and is dismissed, but without costs.”

In support of his contention, he relied upon the law laid down by the Hon'ble Supreme Court in the case of **SI Rooplal and Ors. Vs. Lt. Governor Through Chief Secretary, Delhi and Ors** (CA Nos.5363-64 of 1997), **Union of India & Ors Vs. Col GS Grewal** (Civil Appeal No. 3879 of 2013) and the judgment of Delhi High Court in the case of **Mahender Singh Vs. Govt. of NCT of Delhi and Others** (WP (C) 301/2012).

8 From the perusal of the inquiry report it is crystal clear that there is evidence on record. The counsel for the applicant has not pointed out any principles of natural justice or any procedural rules of holding departmental enquiry having been violated by the inquiry officer nor has she pointed out violation of principles of natural justice by the disciplinary authority or the appellate authority.

9. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of **K.L.Shinde Vs. State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed 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. Khadabazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not

open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi Vs. UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

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

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

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

Recently in the case of **Union of India and Others Vs. P.Gunasekaran**

(2015(2) SCC 610), 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."

10. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice and also respectfully following the reasoning given by the Co-ordinate Bench in the case of Pankaj Sharma (supra), the OA requires to be dismissed.

11. Accordingly, OA is dismissed. No order as to costs.

(Aradhana Johri)
Member (A)

(S.N. Terdal)
Member (J)

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