



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No-3224/2014**

**MA No-2071/2017**

**With**

**OA No-3231/2014**

**MA No-4508/2017/MA No-2610/2015/MA No-2070/2017**

**New Delhi, this the 21<sup>st</sup> day of November, 2019**

**Hon'ble Sh. A.K. Bishnoi, Member(A)**

**Hon'ble Sh. R.N. Singh, Member(J)**

**OA No. 3224/2014**

Nanak Chand, Age-49 years

PIS No-28863208

S/o Sh. Ram Bakas Singh

R/o Qtr. No-A-21

PS Vivek Vihar, Delhi.

...Applicant

(through Sh. Sachin Chauhan)

Versus

1. Govt. of NCTD through  
The Commissioner of Police  
Delhi Police, PHQ, IP Estate, New Delhi.
2. The Addl. Commissioner of Police  
Delhi Police through  
The Commissioner of Police  
PHQ, IP Estate, New Delhi.
3. The Dy. Commissioner of Police  
1<sup>st</sup> Bn. DAP through  
The Commissioner of Police  
PHQ, IP Estate, New Delhi.
4. The Addl. Dy. Commissioner of Police  
General Administration  
PHQ, Delhi. ...Respondents



(through Ms. Rashmi Chopra with Ms.  
Asiya)

**OA No. 3231/2014**

Neeraj Kumar, Age-46 years  
PIS No-28900933  
S/o Sh. Jagdish Prasad  
R/o H. No. – 106, Type-I  
P.S. Police Colony-Saraswati Vihar  
Delhi-34. ...Applicant

(through Sh. Sachin Chauhan)

Versus

1. Govt. of NCTD through  
The Commissioner of Police  
Delhi Police, PHQ, IP Estate  
New Delhi.
2. The Addl. Commissioner of Police  
Delhi Police through  
The Commissioner of Police  
PHQ, IP Estate, New Delhi.
3. The Dy. Commissioner of Police  
1<sup>st</sup> Bn. DAP through  
The Commissioner of Police  
PHQ, IP Estate, New Delhi.
4. The Addl. Dy. Commissioner of Police  
General Administration  
PHQ, Delhi. ...Respondents

(through Sh. Ramesh Shukla for Ms.  
Pratima Gupta)



## **ORDER(ORAL)**

**Hon'ble Sh. R.N. Singh, Member(J)**

Heard learned counsel for the parties.

2. The applicants who have been working as Constable under the respondents have challenged the order dated 03.03.2012 vide which a common departmental inquiry was initiated, Disciplinary Order/Orders dated 14.11.2013 and Appellate Order/Orders dated 25.08.2014 vide which the applicants have been awarded the punishment of dismissal from service and such order/orders have been confirmed by the Appellate Authority respectively. The applicants have also challenged the findings of the Inquiring Authority dated 20.06.2013 and further, the applicants have challenged the eviction notice under Section 27(i) (b) (Delhi Police Act, 1978) whereby the applicants were directed to vacate the Government quarter and in case of failing to do so, they were informed that damage charges/market rent shall be recovered from them.

3. The undisputed facts are that the applicants have been proceeded departmentally in a common proceeding and allegations against them are same, the impugned orders are of same date, with



the consent of the learned counsels for the parties, both the OA No. 3224/2014 and OA No. 3231/2014 are being disposed of by a common order.

4. The prayer made by the applicants in the present OAs are as under:

“(i) To quash and set aside the order dated 14.11.2013 whereby the extreme punishment i.e. dismissal from service is imposed upon the applicant and order dated 26.08.2014 whereby the appeal of the applicant against the order of dismissal has been rejected by Appellate Authority and to further direct the respondent that applicant be reinstated back in service to the post of Constable forthwith with all consequential benefits including seniority & promotion and pay & allowance.

(ii) To quash and set aside the findings of the Enquiry Officer dated 20.06.2013.

(iii) to quash and set aside the eviction notice dated u/s 27(i)(b) of Delhi Police Act, 1978 whereby applicant is directed to vacate the Govt. Quarter and failing which damage charges/market rent per month will be recovered.

Or/and

(iv) Any other relief which this Hon’ble court deems fit and proper may also be awarded to the applicant.”

5. It is admitted case of the applicant in OA No. 3224/2014 that during the pendency of the OA, the applicant has vacated the Government quarter, then occupied by him. Accordingly, learned counsel for the applicant submits that the prayer of the applicant with regard to the Government accommodation in OA No. 3224/2014 has become infructuous. Prayer of the applicant in



respect of the Government accommodation is dismissed accordingly.

6. Though the applicants have taken various grounds to challenge the aforesaid orders, however, at this stage, learned counsel for the applicant argues the applicant's claim for the time being on the ground that the impugned Disciplinary Orders dated 14.11.2013 and Appellate Orders dated 25.08.2014 are in violation of provisions of Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter called, Rules). He further submits that the Rule 16(xi) of the Rules provides as under:

“(xi)If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.”

7. Sh. Sachin Chauhan, learned counsel for the applicant submits that as per the summary of allegations charges framed against the applicants were only regarding involvement of the applicants in FIR No. 333/07 dated 08.08.2007 under Section 419/420/468/471/120B IPC. However, while passing the impugned Disciplinary and Appellate Orders, the concerned authorities have heavily relied upon the extraneous material inasmuch as they have relied upon the applicants' involvement in



FIR No. 145/07 under Section 406/420/467/468/471/120B IPC registered with ES Kotwali, Dehat Bulandhahar, UP and another FIR No. 02/08 under Section 419/420/468/471/120B IPC registered at Police Station Vivek Vihar, Delhi and have also given a specific finding of the applicants' constant involvement in criminal activities making the concerned authorities to take the action and award penalty as awarded in the impugned Disciplinary Order(s) and affirmed by the Appellate Order(s). The summary of allegations as recorded by the Inquiry Officer in his findings and conclusion dated 20.06.2013 (Annexure A/3) reads as under:

“It is alleged against Constable Nanak Chand, No. 4467/T, 1421/DAP (PIS No. 28863208) & Neeraj Kumar, No. 4464/T, 3456/DAP (PIS No. 28900933) that a case FIR No. 333/07 dated 08.08.2007 u/s 419/420/468/471/120-B IPC was registered at Police Station Vivek Vihar Delhi on the complaint of Shri Madan Pal Singh, S/o Shri Sukhbir Singh r/o Juksana Khurd, Post Juksana Kalan, PS Jahangirabad, District Bulandshahar, UP and both Constables Nanak Chand, No. 4467/T, (now 1421/DAP) & Neeraj Kumar, No. 4464/T, (now 3456/DAP) were arrested in this case on 10.01.2008 at 6 PM & 5.35 PM respectively. Both you were charge-sheeted in this case and bailed out on 04.07.2008 & 25.02.2008 respectively.”

The charges framed against the applicants' as recorded by the said Inquiry Officer in his findings under reference reads as under:

“I, Insp Raj Pal Dabas, EO charge you Constable Nanak Chand, No. 4467/T, 1421/DAP (PIS No. 28863208) & Neeraj Kumar, No. 4464/T, 3465/DAP (PIS No. 28900933) that a case FIR No. 333/07 u/s 419/420/468/471/120-B IPC was registered against you at Police Station Vivek Vihar Delhi on the complaint of Shri Madan Pal Singh, S/o Shri Sukhbir Singh r/o Juksana Khurd, Post Juksana



Kalan, PS Jahangirabad, District Bulandshaahar, UP and both you Constables Nanak Chand, No. 4467/T, (now 1421/DAP & Neeraj Kumar, No. 4464/T, (now 3456/DAP) were arrested in this case on 10.01.2008 at 6 PM & 5.35 PM respectively. Both you were charge-sheeted in this case and bailed out on 04.07.2008 & 25.02.2008 respectively.”

The relevant portion of the impugned Disciplinary Order/Orders dated 14.11.2013 reads as under:

“I have also seen the record and found that both the delinquents are also involved in more or less similar kind of two more criminal cases vide FIR No.145/07 u/s 406/420/467/468/471/120B IPC PS Kotwali Dehat Bulandshahar, UP and FIR No. 02/08 u/s 419/420/468/471/120B IPC PS Vivek Vihar, Delhi and in both the cases the Hon’ble Court has imposed charge upon them and still pending trial. Though these are not the part of present DE, but their involvement in these both criminal cases clearly shows their propensities towards constant criminal activities and cheating of innocent people by making fake promises and committing acts of forgery. Their constant involvement in criminal activities is inclining me to take stern action against them. The act committed by them is so grave and their further retention in the department is unwarranted and prejudicial in public interest. They have brought a bad name and disrepute on the face of department by committing such un-expected and undesirable acts. Police personnel are duty bound to protect the life and property of common people but they themselves have been involved in such reprehensible acts and under these circumstances, I, do not find them suitable to retain them any more in service, because it is not in the interest of department.

Therefore, agreeing with the findings of Enquiry Officer, I, Norbu Tshering, DCP/1<sup>st</sup> Bn. DAP do hereby dismiss Constable Nanak Chand, No. 4467/T, 1421/DAP & Neeraj Kumar, No. 4464/T, 3456/DAP from the force with immediate effect. Their suspension period from 10.01.2008 to 27.02.2013 is decided as “period not spent on duty” for all intents and purposes.”

Similarly, the relevant portion of the Appellate Order/Orders dated 26.08.2014 reads as under:

“ ... It has also come on record that both the appellants are also involved in similar kind of two more Criminal Cases vide FIR No.



145/07 u/s 406/420/467/468/471/120B IPC PS Kotwali Dehat Bulandshahar, UP and FIR No. 02/08 u/s 419/420/468/471/120B IPC PS Vivek Vihar, Delhi and in both the cases the Hon'ble Court has imposed charge upon them and still pending trial in the Court. Though, these criminal cases were not the part of present matter, but their involvement in these both criminal cases shows their propensities towards constant criminal activities and cheating of innocent people by making fake promises in getting employment in Railway and committing acts of forgery. The appellants have committed most reprehensible and disgusting act by indulging in such kind of activities. Besides, during the DE proceedings charge leveled against the appellants was proved. Keeping in view the facts of the case and material on record, I do not find any reason to interfere with the impugned order. The appeals, are accordingly, rejected.

Let the appellants be informed accordingly.”

8. Sh. Sachin Chauhan, learned counsel for the applicant submits that identical issue had come for adjudication before this Tribunal in OA No. 2100/2005 titled ***Ex. Head Constable (A.W.O), Dinesh Kumar vs. GNCTD & Ors.*** which was decided by this Tribunal vide order/judgment dated 04.07.2007 (Annexure A/8) wherein this Tribunal after considering the issue at length and taking into consideration the provisions of Rule 16(xi) of the Rules, observed as under:

“6. We have heard the learned counsel representing the parties and with their assistance, examined the records of the case. It remained undisputed during the course of arguments that Rule 16(xi) of Delhi Police (Punishment and Appeal) Rules has not been followed in the departmental enquiry. Indeed, the previous record of the Applicant has been taken into consideration while inflicting punishment of dismissal upon the Applicant. We do not wish to comment at this stage upon the plea raised by the learned counsel for the Respondents that bigamy is in itself sufficiently serious charge to entail an order of dismissal. It is in the discretion of the disciplinary authority to arrive at such a conclusion on the totality



of facts and circumstances of the case. The matter is remanded to the disciplinary authority, the 3<sup>rd</sup> Respondent herein, who will consider the matter afresh and if in his discretion and judgment the charge under circumstances may be serious enough to entail an order of dismissal, may pass a fresh order. If, however, in his view the order of dismissal is to be passed only in the background of previous bad record of the Applicant, surely the Applicant would be charged accordingly and after following the due procedure, appropriate order shall be passed. The impugned orders are set aside with the directions as mentioned above. In as much as, it is possible that the disciplinary authority may consider the primary charge against the Applicant serious enough to entail an order of dismissal, we are not passing any order with regard to consequential benefits which an employee would ordinarily get on setting aside of the impugned orders. In the peculiar facts and circumstances of the case, we are of the view that such consequential benefits would abide the final event. In other words, the Applicant will be entitled to consequential benefits only in view of disciplinary authority the charge proved against the Applicant may not in itself entail in order of dismissal either independently or read with previous record of the Applicant. Let the exercise as ordained above be completed within four months from today. There shall be no order as to costs.”

9. Learned counsel for the applicant further argues that the aforesaid provision of the Rule is mandatory in nature and violation of the same vitiates the impugned Disciplinary as well as Appellate Order/Orders. In this regard, he refers and places reliance upon the judgment/order dated 16.11.2000 of this Tribunal in OA No. 139/1998 titled *Constable Satish Kumar vs. Union of India & Ors.*, Para 2 whereof reads as under:

“2. Aforesaid rule, it is clear, is a rule which enunciates a principle of natural justice. The aforesaid provision is of a mandatory nature. The same provides that the previous bad record shall from the basis of a definite charge. (emphasis provided)”

Para 11 of the judgment in *Constable Satish Kumar (supra)* reads as under:



“ 11. It is clarified that it will be open to the disciplinary authority, if so advised, to consider imposing a penalty afresh either without taking into consideration the aforesaid adverse record or after framing an additional charge and after affording the applicant an opportunity of showing cause, and in either case, the applicant will be given an opportunity of being heard.”

10. In response to the notice from this Tribunal, the respondents have filed their counter reply. The respondents have disputed and denied the claim of the applicant. Learned counsel for the respondents, on the basis of the counter reply filed on behalf of the respondents defends the impugned orders.

11. Learned counsel for the respondents further argues that even if there is violation of the provisions of Rule 16(xi) of the Rules, it has not been shown by the applicants that any prejudice has been caused to them.

12. We heard the submissions made by learned counsel for the parties. We have perused the relevant pleadings on record and have also considered the rival contentions on behalf of the parties. From the aforesaid facts, it is evident that while passing the impugned Disciplinary and Appellate Orders, the authorities concerned have relied upon the extraneous material, i.e., involvement of the applicants in the cases other than the one which have been the subject matter of the present common disciplinary proceedings and while inflicting the said punishment, the



concerned authorities heavily relied upon the involvement of the applicants in such cases which have not been the subject matter of the charges framed against them or summary of allegations against the applicants. However, fact remains that the aforesaid provision of the Rule is mandatory in nature as ruled by this Tribunal in Constable Satish Kumar(supra) and violation of the mandatory provision of the Rule is itself sufficient to show prejudice to the applicants. Moreover, the contention being made by the respondents in the present cases has been considered by this Tribunal while passing the order/judgment dated 16.11.2000 in Constable Satish Kumar (supra).

13. In view of the aforesaid facts and discussions, we are of the view that the impugned Disciplinary Order/Orders as well as Appellate Order/Orders are liable to be set aside. In view of the facts and circumstances, the Disciplinary Order/Orders dated 14.11.2013 and Appellate Order/Orders dated 25.08.2014 are set aside. The matter is remitted back to the Disciplinary Authority to consider the matter afresh strictly in consonance with the provisions of Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980. However, it is made clear that the applicants shall be entitled for the consequential benefits only after the final



decision of the Disciplinary/Appellate authority on the subject.

We make it clear that no other ground raised by the applicants in the aforesaid OAs have been looked into and if any of the grievance of the applicants still survive, it will be open to the applicants to raise all legal grounds in appropriate proceedings in accordance with the law. It is further made clear that once the impugned Disciplinary as well as Appellate Order/Orders are found not sustainable in the eyes of the law, the resultant notice of eviction in respect of the Government accommodation qua the applicant in OA No. 3231/2014 is also set aside. The aforesaid exercise shall be completed by the Respondents within a period of three months from the date of receipt of a certified copy of this order.

Learned counsel for the applicant submits that the pending MAs have become infructuous with the lapse of time. The MAs, accordingly, stand disposed of. However, in the facts and circumstances, no order as to costs.

**(R.N. Singh)**  
**Member(J)**

**(A.K. Bishnoi)**  
**Member(A)**

/ns/