

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 19.11.2009**
Judgment delivered on: 12.01.2010

+ **W.P. (C) No.5124/2008 & C.M. No.9805/2008**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Mr. Mohammad Sajid, Advocate

versus

S.I. OM SINGH Respondent
Through: Mr. Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioners assail the order dated 11.04.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.2627/2006, whereby the Tribunal has allowed the aforesaid Original Application filed by the respondent and quashed the disagreement note dated 05.06.2006 issued by the Disciplinary

Authority, disagreeing with the findings of the Inquiry Officer; order of the Disciplinary Authority dated 13.07.2006 inflicting punishment of forfeiture of respondent's two years approved service permanently, entailing reduction in his pay from Rs.7425/- per month to Rs.7075/- per month and treating the period of his suspension as not spent on duty, and; the order dated 23.10.2006 passed by the Appellate Authority rejecting the respondent's departmental appeal against the aforesaid order of the Disciplinary Authority.

2. The respondent S.I. Om Singh was serving as a Sub-Inspector in Delhi Police at the relevant time. He along with H.C. Jasbir Singh, Const. Satender, Const. Dharambir Singh and Const. Rajender Singh had been put on escort duty on 08.09.2003 for producing Under Trial Prisoner (UTP) Jagminder Singh of Ludhiana before the concerned trial Court in case bearing FIR No.74/2000 under Sections 392/379/148/149 IPC registered at police station Rampura Phull, Punjab. The respondent was to lead the escort party. Vide D.D. No.27A dated 08.09.2003 the escort party had left for Bhatinda under the supervision of the respondent. During the production of the UTP in Court on 09.09.2003, he slipped away from the lawful custody of the escort party and a case bearing FIR No.464/2003 under Section 224/225 IPC P.S. Kotwali, Bhatinda, Punjab was registered in this regard.

3. A searching departmental inquiry was ordered under Rule 29(1) of Delhi Police (Punishment and Appeal) Rules, 1980, which was entrusted to Sh. Ravi Dutt, ACP/HQ, III Bn. DAP, who conducted the same and submitted his report that the UTP had escaped from lawful custody of the escorting party due to their negligence and carelessness. It was found that the respondent S.I. Om Singh did not go with the escort party and had apparently managed his admission at Mohan Nursing Home, Yamuna Vihar, Delhi afterwards when he learnt that the UTP Jagminder Singh had escaped from custody. The UTP was engaged in various heinous crimes in Delhi, Ludhiana and Bhatinda. After perusing the searching departmental inquiry report, the Joint Commissioner of Police (AP), Delhi accorded approval for initiating a regular departmental inquiry, inter alia, against the respondent under Rule 29(3) of the Delhi Police (Punishment and Appeal) Rules, 1980. The respondent was also placed under suspension vide order dated 10.09.2003. However, he was reinstated in service on 17.02.2004.

4. Consequently, a departmental inquiry was initiated against the respondent on 17.10.2003 inter alia on the ground that he did not accompany the escort party entrusted with the task of taking the UTP to a Court in Bhatinda, Punjab, and then managed his own admission in a nursing home when he learnt that the aforesaid UTP had escaped from custody. The respondent S.I. Om

Singh was charged with conduct amounting to grave misconduct, negligence, indiscipline and dereliction of his official duty. The other members of the escort party were also similarly charged.

5. The Inquiry Officer submitted his report returning his finding that the charge against the respondent S.I. Om Singh was not proved in view of his illness, but the charge against the other members of the escorting party stood proved without any shadow of doubt.

6. The Disciplinary Authority, however, did not agree with the finding of the Inquiry Officer in respect of the respondent and recorded a disagreement note dated 17.10.2003 which was sent to the respondent. The respondent represented against the said disagreement note. However, the Disciplinary Authority imposed a punishment of forfeiture of respondent's two years approved service.

7. The respondent then preferred an appeal before the Appellate Authority, who modified the penalty order, reducing the same to forfeiture of one year of service vide order dated 02.11.2004. The respondent then preferred O.A. No.3047/2004 before the Tribunal to challenge the penalty imposed on him. The Tribunal vide order dated 20.04.2006 remitted the case back to the Disciplinary Authority after quashing the note of disagreement

dated 17.10.2003 and the consequential order dated 24.08.2004 passed by the Disciplinary Authority as well as the order of the Appellate Authority dated 02.11.2004 on the ground that the Disciplinary Authority had not recorded tentative reasons for issuing the disagreement note, but had predetermined the issue. The Disciplinary Authority was directed to pass a fresh order on the findings submitted by the Inquiry Officer.

8. Consequent upon the passing of the said order, the Disciplinary Authority recorded a fresh note of disagreement dated 05.06.2006. The respondent represented against the said note of disagreement. After considering the same the Disciplinary Authority passed the order of punishment dated 13.07.2006 and inflicted the punishment of forfeiture of two years approved service permanently. This order was upheld by the Appellate Authority vide order dated 17.10.2006. As aforesaid, all these orders were challenged by the respondent in O.A. No.2627/2006, which has been allowed by the Tribunal.

9. Learned counsel for the petitioner submits that the learned Tribunal, while passing the impugned order, has scrutinized the inquiry report, the evidence led in the departmental inquiry proceedings, the order passed by the Disciplinary Authority and the Appellate Authority as if the Tribunal was sitting in appeal over the

same. He submits that it was beyond the jurisdiction of the Tribunal to have gone into the merits of the case so as to arrive at its own assessment with regard to the establishment of guilt of the respondent. He submits that it was not for the Tribunal to reach its own conclusion when the inquiry had been conducted by following the due procedure, in compliance with the principles of natural justice, and the findings recorded by the Disciplinary Authority and by the Appellate Authority were founded upon cogent evidence. He submits that when, on preponderance of probabilities, the guilt of the respondent stood established, it was not open to the Tribunal to re-appreciate the evidence for itself to arrive at its own finding that the charge framed against the respondent was not proved.

10. On the other hand, the submission of the learned counsel for the respondent is that the Tribunal was justified in examining the merits of the case so as to appreciate whether it was a case of “no evidence” or not. He submits that the Tribunal had itself noted in para 12 of the impugned order that the evidence of the witnesses had been considered not with a view to reappraise the evidence, but only to examine whether there was any evidence against the respondent to prove the charge framed by the Inquiry Officer and also to examine whether procedure followed in the inquiry conformed to the rules.

11. Having heard learned counsels for the parties and perused the impugned order, as well as the record pertaining to the inquiry including the order passed by the Disciplinary Authority and the Appellate Authority, we are of the view that the Tribunal has overstepped its jurisdiction and has assumed the role of an Appellate Authority while scrutinizing the orders passed by the Disciplinary Authority and the Appellate Authority.

12. The charge framed against the respondent reads as follows:

“I, K.S. Dalal, ACP/E.O. DE Cell, hereby charge you SI Om Singh No. D-3196, HC Jasbir Singh No. 7160/DAP, Const. Satender No. 2686/DAP, Ct. Dharambir No. 7526/DAP and Ct. Rajinder No.2221/DAP that while posted in IIIrd Bn DAP, you all were detailed on escort duty over UTP Jagminder Singh S/O Sh Ranjeet Singh R/O 14 Canadian Enclave Ferozpur Road, Ludhiana (Punjab) for producing before the concerned trial court in case FIR No.74/2000 u/s 392/379/148/149 IPC P.S. Ram Pura Pull, Distt. Bhatinda Punjab. You all constituting escort guard under the supervision of SI Om Singh No. D-3196 reportedly departed vide DD No. 27-A dated 8-9-2003 3rd Bn DAP, from Delhi to Bhatinda Punjab. But you, SI Om Singh, No.D/3196 knowingly and intentionally did not receive a service revolver from the Kot and did not proceed with the Escort Guard to Bhatinda with your, common intention. After production in the concerned court at Bhatinda on 9-9-2003 the UTP Jagminder Singh ran away from the lawful custody of the remaining escort guard for which a case FIR No.

464/2003 u/s 224/225 IPC was registered in P.S. Kotwali Bhatinda. On receipt of this information you, SI Om Singh No. D-3196, managed your admission in Mohan Nursing Home Yamuna Vihar Delhi. As per rule 29 (i) of Delhi Police (Punishment & Appeal) Rules-1980 a searching enquiry was also conducted by Sh Ravi Dutt ACP/HQ Illrd Bn. Who also established that the UTP has escaped from your lawful custody due to your negligence and carelessness.

The above act on the part of all of you amounts to be a grave misconduct, negligence and dereliction in the discharge of your official duty which renders all of you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

13. In the departmental enquiry, various departmental witnesses/prosecution witnesses were examined and similarly the respondent examined various defence witnesses. The Inquiry Officer in his report exonerated the respondent while holding other personnel, entrusted with the task of escorting the UTP, guilty of negligence and misconduct. The case of the respondent was singled out on the ground that the respondent had been able to prove that he was not well. The medical record had been produced from Mohan Nursing Home by one Dr. Arun Aggarwal. The Inquiry Officer believed the medical record so produced.

14. The Disciplinary Authority gave the following tentative reasons for disagreeing with the finding of the Inquiry Officer vis-à-vis the respondent:

“1. The conclusion of the E.O. that the charge against SI Om Singh does not prove in view of his illness does not seem to be justified. If the defaulter did not pre-plan to avoid this duty and if he was not feeling well at New Delhi Railway Station, why did he not inform to the D.O./III Bn. DAP and to the Senior officers despite being the commanding officer of the escort party. Why did he not inform through other guard members if he was not in a position to do so himself.

2. Why was he admitted in Mohan Nursing Home, Yamuna Vihar, Delhi in a semi-conscious condition from the New Delhi Railway Station which is far away i.e. 15 Kms. from there. Who admitted him in the Mohan Nursing Home as he was in semi-conscious condition and why did he prefer to admit him there and not in the nearest Govt./Private Hospitals & Nursing Homes just adjacent to New Delhi Railway Station. The whole story seems to be doubtful.

3. Before proceeding from Vikas Puri Police Lines to New Delhi Railway Station why did he not obtain the arms and ammunition from the VPL Kot. It appears as if he had no plans to proceed on his duty otherwise he should have observed the normal drill.

4. HC Jasbir Singh, No. 7160/DAP in his statement recorded by Sh. Ravi Dutt, ACP had stated that SI Om Singh had proceeded from the Railway Station to get some medicines, as he was not feeling well. SI Om Singh stated that in case he could not come back in time they should leave for

Bhatinda with the UTP and he will reach direct Bhatinda in the court. Why HC Jasbir Singh should submit this report against the SI if it was not factually correct.

5. On 18.8.04 during O.R. all the four other defaulters of the guard party of SI Om Singh gave in writing the above facts mentioned at SI. NO. 4 in the presence of SI Om Singh. HC Jasbir Singh has also disclosed in his statement that he has interacted with SI Om Singh from Bhatinda Court before production of UTP i.e. on 9.9.03 on his telephone No. 01398-275932 and enquired from him whether he was coming. Dr. Arun Aggarwal disclosed that he was admitted in hospital on 8.9.03 and discharged on 12.9.03 at 12 Noon. The statement of SI Om Singh seem to be tutored as why did he not state to HC Jasbir Singh that he was admitted in hospital and not in a position to reach at Bhatinda Court instead of saying that he was coming. This point create doubts about the varacity of the statement of SI Om Singh.

6. Dr. Arun Aggarwal from Mohan Nursing Home, Yamuna Vihar, Delhi appeared in the D.E. as DW-4 who disclosed that SI Om Singh was admitted in hospital on 8.9.03 and discharged on 12.9.03 at 12 Noon. He was admitted in his Nursing Home with chest pain and in a semi-conscious condition. He was having very much perspiration and chest pain at the time of admission and he was brought by an other man namely Surender Kumar. On 10.9.03 when the condition of SI Om Singh had improved then he had told that he was serving in Police Department and his office may be informed. He does not know whether any information was given to his office or not. There was no facility of outgoing telephone in the ICU and only intercoming facility was available there. The statement of the Dr. Arun Aggarwal

seem to be tutored as why did he not enquire about Surender Kumar who took the SI to Mohan Nursing Home, Yamuna Vihar from New Delhi Railway Station i.e. 15 Kms far away from Station. Why any well-wisher public person had not taken the SI to nearest hospital/Nursing Home. Why did Dr. Arun Aggarwal not lodge the complete residential address of Mr. Surender Kumar in his official record. Dr. Arun Aggarwal of Mohan Nursing Home, Yamuna Vihar, Delhi received the patient in semi-conscious condition for treatment through unknown person then why did he not report the matter to PCR & Local Police. These points create doubts about the veracity of the statement of Shri Arun Aggarwal.

7. Why did SI Om Singh not obtain the permission of the competent authority as specified in rule 19 (5) of Leave Rules, 1972 after coming into senses.”

15. The respondent represented in response to the disagreement note. The Disciplinary Authority considered the representation made by the respondent and passed the order imposing the said penalty. While dealing with the plea taken by the respondent, that the evidence had been overlooked and that he was sought to be punished merely on the basis of suspicion and surmise, and while dealing with the medical record and the doctor's evidence relied upon by the respondent, the Disciplinary Authority in his order dated 13.07.2006 held as follows:

“The plea taken by the defaulter is not tenable. There are sufficient material/information are available on record to prove the charge against the

SI. Before proceeding from VPL to New Delhi Railway Station he did not obtain the arms and ammunition from the VPL Kot which is the violation of rules, practices and instructions issued from time to time. It is clear that this was the pre-plan of the defaulter that he will not proceed for Bhatinda from New Delhi Railway Station. As per his plea, he was admitted in the Nursing Home on 08.09.2003 in the evening whereas the UTP had escaped on 09.09.03. HC Jasbir Singh in his statement recorded by Shri Ravi Dutt, ACP, had stated that SI Om Singh had proceeded from the Railway Station to get some medicines, as he was not feeling well. SI Om Singh stated that in case he could not come back in time they should leave for Bhatinda with the UTP and he will reach direct Bhatinda in the court. It makes clear that SI Om Singh was not in a mood to proceed to Bhatinda with the guard party as Incharge guard. It shows that SI Om Singh had managed with guard party that he will be available in Delhi and after production they may intimate him for completing the assigned job. But incidentally UTP escaped from the lawful custody of the guard party and when the guard party informed him over phone, he (SI Om Singh) immediately managed his admission in Mohan Nursing Home, Yamuna Vihar as he is residing at Shahdara. On 18.08.2004 during O.R. all the four other defaulters of the guard party of SI Om Singh gave in writing the above facts. HC Jasbir Singh has disclosed in his statement that he has interacted with SI Om Singh from Bhatinda Court before production of UTP on Telephone No.01398-275932 and enquired from him whether he was coming or not who told that he was coming. It is also clear that he was not admitted in the Mohan Nursing Home and manipulated the medical papers to save him from the allegation. It is clear that SI Om Singh has fabricated the story in view of the statement of lower subordinates of his guard party who have given in writing against him in his presence. Being a senior officer and Incharge guard he should have come to assemble at VPL and got issued the arms and ammunition and further proceeded for New Delhi Railway Station but he did not do so. When at New Delhi Railway Station he stated to the guard party that he is not feeling well and gone to take

medicines, at that time he could have telephonically informed to the DO/III Bn. or any other senior officer of this battalion to provide his substitute immediately but he did not do so. The statement of the Dr. Arun Aggarwal seem to be tutored as why did he not enquire about Surender Kumar who took the SI to Mohan Nursing Home, Yamuna Vihar from New Delhi Railway Station i.e. 15 Kms. far away from Station. Why any well-wisher public person had not taken the SI to nearest hospital/Nursing Home. Why did Dr. Arun Aggarwal not lodge the complete residential address of Mr. Surender Kumar in his official record? Dr. Arun Aggarwal of Mohan Nursing Home, Yamuna Vihar, Delhi received the patient in semi-conscious condition for treatment through unknown person then why did he not report the matter to PCR & local Police. These points create doubts about the veracity of the statement of Shri Arun Aggarwal. If the defaulter was not feeling well at New Delhi Railway Station he should have informed to the department immediately and should have asked for his substitute as commanding officer of the escort party, but he did not do so. He did not seek leaves/permission as per leave rule 19(5) which envisage that an application alongwith a copy of medical certificate be made and orders of the competent authority awaited and the leaves be availed after due sanction."

16. The Tribunal, in paragraph 8 of the impugned order refers to various statements made by the witnesses during the course of enquiry. The Tribunal also extracted portions from the enquiry report, wherein the Inquiry Officer had put the responsibility of informing the higher authorities about the absence of the respondent in the escort party on the other personnel, and not on the respondent. The Tribunal was also of the view that the statement of H.C. Jasbir Singh to the effect that, before the production of the UTP in the concerned court at Bhatinda on

09.09.2003, he had called the respondent and enquired from him whether he was coming or not, and that the respondent had replied that he was coming, could not have been taken into account as the said statement had been made by H.C. Jasbir Singh to the Disciplinary Authority and not during the enquiry proceedings. The Tribunal held that the respondent had not been granted sufficient opportunity to refute the statement made by H.C. Jasbir Singh before the Disciplinary Authority and therefore, the same could not be relied upon. The Tribunal held the procedure adopted by the Disciplinary Authority to be in violation of Rule 16(x) of the Delhi Police (Punishment and Appeal) Rules, 1980.

17. Pertinently, the fact that the respondent had intentionally not collected arms and ammunitions from the “kot” like the other members of the escort party, which according to the Disciplinary and Appellate Authorities demonstrated the intention of the respondent not to accompany the escort party from the beginning, was brushed aside by the Tribunal by observing *“The other argument that the Applicant intentionally did not collect arms and ammunition from the ‘Kot’ need not necessarily prove that he had intended from the outset not to accompany the escort party to Bhatinda”*.

18. The Tribunal in paragraph 11 of the impugned order, while dealing with the aspect that the respondent did not inform the superior officers about his illness and the fact that he had not accompanied the escort party observed:

“However, it is seen from the evidence of the witnesses that the Applicant had told the members of the escort party that he was going to get some medicines and after that he met Surrender and told him to take him to hospital. ***It is quite possible that at this point of time he was perhaps not in a position to inform the senior officers himself about his illness and he was also not with the members of the escort party.*** As mentioned above, the enquiry officer has also noted this point and case the responsibility on the escort guards for not informing the Applicant’s controlling officers.” (emphasis supplied)

19. The Tribunal, while dealing with the aspect of the respondent being admitted to Mohan Nursing Home, Yamuna Vihar, Delhi, which was at a distance of about 15 kms. from the railway station and not to a private or government hospital near the railway station itself, relied upon the statement of DW-5 Surrender Kumar and also opined that the medical record could not be disbelieved merely because there were loose ends and unanswered questions with regard to the admission of the respondent in Mohan Nursing Home, Yamuna Vihar, Delhi. The Tribunal observed that it was for the prosecution to have cross-examined Dr. Arun Aggarwal of Mohan Nursing Home on those aspects and the petitioner having

failed to do so, it cannot disbelieve the medical record produced by Dr. Arun Aggarwal, DW-4.

20. Even if we were to assume for the sake of argument, that the statement of H.C. Jasbir Singh recorded before the Disciplinary Authority (to the effect that he had spoken to the respondent on his phone on 09.09.2003 before producing the UTP in the concerned court at Bhatinda to enquire whether the respondent was coming to Bhatinda, and that the respondent had informed him that he would be joining the escort party) were to be ignored, that by itself does not lead to the conclusion that there was no dereliction of duty on the part of the respondent in neither leading the escort party to Bhatinda, nor informing the superiors about the fact that he had not accompanied the escort party. The said statement of H.C. Jasbir Singh was relevant only for the purpose of puncturing the defence of the respondent that he was admitted to Mohan Nursing Home on the evening of 08.09.2003 and that he remained hospitalized even on 09.09.2003. For the sake of argument, even if it were to be accepted that the respondent was indeed taken ill on 08.09.2003 and was admitted to Mohan Nursing Home on the same day, and that he was treated there, this does not explain the conduct of the respondent in not getting the arms issued from the Kot before proceeding to the railway station, nor his conduct in not informing any of the superior officers at the

railway station about his inability to accompany the escort party due to his ill health. The Disciplinary Authority for these reasons had drawn an inference against the respondent which cannot be said to be unreasonable, or such as no reasonable person could ever take. As aforesaid, the Tribunal has sought to substitute its own view with the probable view of the Disciplinary/Appellate Authorities.

21. The Tribunal, in our view, while disregarding the fact that the respondent had not collected the arms and ammunition from the kot on 08.09.2003 like the other members of the escort party, clearly went beyond its jurisdiction. It was not for the Tribunal to conclude that the said failure of the respondent did not *"necessarily prove"* that he had intended from the outset not to accompany the escort party to Bhatinda. Similarly, while dealing with the failure of the respondent to inform the superiors about his illness and failure to accompany the escort party, the Tribunal reached its own conclusion by observing that *"it is quite possible"* that the respondent *"was perhaps not in a position to inform the senior officers himself about his illness and he was also not with the members of the escort party"*. The Tribunal clearly forgot, while making these observations, that it was substituting its own view for that of the Disciplinary and Appellate Authority by appreciating the evidence and material that had been brought on record. The

approach of the Tribunal should have been to see whether there was any germane or relevant material for the Disciplinary and Appellate Authorities to arrive at their findings. Merely because another view could possibly have been taken on the basis of the evidence and material brought on record, was no ground for the Tribunal to interfere, when the view taken by the departmental authorities was also a plausible view on the application of the principles of preponderance of probabilities.

22. The Tribunal also proceeded to accept the approach of the Inquiry Officer that it was the responsibility of other escort guards to inform the superior officers about the absence of the respondent in the escort party, and not that of the respondent himself, even though the Disciplinary Authority in his disagreement note had disagreed with that approach. The Tribunal could not have merely relied upon the approach of the Inquiry Officer and discarded the approach of the Disciplinary Authority without even discussing the said issue, or giving its own reason as to why the approach of the Disciplinary Authority could not be accepted even as a plausible view/approach.

23. Even otherwise, to us it appears that the approach of the Inquiry Officer was not the correct one, keeping in view the fact that it was the respondent who was to lead the escort party; it was

the respondent who informed the other members of the escort party on the railway station that he was just proceeding to get some medicine; it was the respondent who did not inform the escort party that he would not accompany them; and, according to H.C. Jasbir Singh it was the respondent who even on the next date, i.e. 09.09.2003, kept the escort party under the misimpression that he would join them in Bhatinda. The respondent being the leader of the escort party, had the prime responsibility of leading the said party, and on his failure to do so, for whatever reason, to inform the superiors about his inability to do so.

24. We may add that the statement of H.C. Jasbir Singh was made before the Disciplinary Authority in the presence of the respondent. This is evident from paragraph 5 of the disagreement note extracted above. The respondent never controverted this position before any of the authorities or even before the Tribunal. From the record, it appears that the grievance of the respondent with regard to the said statement made by H.C. Jasbir Singh was not that the respondent did not get an opportunity to rebut the assertion of H.C. Jasbir Singh, or to cross-examine him, but it was only that the said statement had not been made by H.C. Jasbir Singh before the Inquiry Officer. This is evident from ground (ix) taken by the respondent in his representation made in response to the disagreement note dated 05.06.2006, as well as his

departmental appeal. The identical ground taken in these documents reads as follows:

“The present disagreement note is based on extraneous matter as the statement made in the OR are extraneous in nature as the same is not being proved in the DE and still being relied upon by the DISCIPLINARY AUTHORITY”.

25. Even in the O.A. preferred before the Tribunal, the ground taken by the respondent in this regard, reads as follows:

“That the present disagreement note is based on extraneous matter as the statement made in the OR are extraneous in nature as the same is not being proved in the departmental inquiry and still being relied upon by the Disciplinary Authority.”

26. Merely because the statement of H.C. Jasbir Singh to the aforesaid effect was made before the Disciplinary Authority, and not before the Inquiry Officer, is not a sufficient ground to disregard the said statement. It may not have been correct to rely on such a statement if the delinquent had not been provided with sufficient opportunity in compliance with the principles of natural justice to meet the said statement, and the delinquent had shown that he has suffered a prejudice because of the denial of such an opportunity despite it being demanded. As aforesaid, the statement had been made in the presence of the respondent. This fact, though recorded in the disagreement note dated 05.06.2006, has never been refuted by the respondent. He was, therefore,

aware of the statement made by H.C. Jasbir Singh. It is not the respondent's case that he refuted the said statement of H.C. Jasbir Singh as false. It was also not his case that he desired to cross-examine, or to confront H.C. Jasbir Singh, when he made the said statement. It was not his case that he requested the Disciplinary Authority to allow him to lead any rebuttal evidence on the said aspect. It was also not his case either before the Appellate Authority or even before the Tribunal that the Disciplinary Authority, despite his request in this behalf, did not permit him to cross-examine H.C. Jasbir Singh on his statement made before the Disciplinary Authority, or to lead his own rebuttal statement. The respondent did not disclose either before the Disciplinary Authority, or the Appellate Authority, or the Tribunal or even before us, as to what was the prejudice suffered by him by the conduct of the Disciplinary Authority in recording the statement of H.C. Jasbir Singh on his own, and not sending back the enquiry to the Inquiry Officer.

27. The Disciplinary Authority is entitled to conduct the enquiry either on his own or to assign the same to another competent officer. The Inquiry Officer conducts the enquiry for and on behalf of the Disciplinary Authority. Therefore, even if a statement is made by a witness before the Disciplinary Authority, which may not have been made before the Inquiry Officer, the

same cannot be brushed aside only on the ground that the statement ought to have been made in the enquiry proceedings before the Inquiry Officer and not before the Disciplinary Authority. A perusal of Rule 16(x) of the Delhi Police (Punishment and Appeal) Rules, 1980 also shows that the Disciplinary Authority may record further evidence, which may have been left out before the Inquiry Officer, on his own or he may send the inquiry back to the Inquiry Officer or some other Inquiry Officer to record such further evidence. Rule 16(x) of the aforesaid Rules reads as follows:

“16(x). On receipt of the Enquiry Officer’s report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the circumstance of the case for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further evidence, if he so desires, and to submit a supplementary statements, which he may wish to make.”

28. The said Rule also shows that opportunity to lead further evidence and to submit a supplementary statement is to be provided to the accused and the same is to be recorded “*if he so desires*”. In the present case, it has never been the case of the

respondent that he desired to lead further evidence or make a supplementary statement either by way of cross-examination of H.C. Jasbir Singh or by way of leading any further evidence of any witness.

29. In our view, for the reasons aforesaid, it cannot be said that, in the facts of this case, there has been a breach of either Rule 16(x) or of the principles of natural justice. In any event, as aforesaid, the bottom line is that the non-compliance of the principles of natural justice should be demonstrated to have caused prejudice to the delinquent to vitiate the disciplinary action. Reliance may be placed on ***Haryana Financial Corpn. v. Kailash Chandra Ahuja*** (2008) 9 SCC 31, ***Aligarh Muslim University v. Mansoor Ali Khan*** (2000) 7 SCC 529, ***Canara Bank v. Debasis Das*** (2003) 4 SCC 557, ***P.D. Aggarwal v. State Bank of India*** (2006) 8 SCC 776, ***Pandiyam Roadways Corpn. Ltd. v. N. Balakrishnan*** (2007) 9 SCC 755, ***Al Mehdwai v. Secretary of State for the Home Department*** (1990) 1 AC 876 and ***Divisional Manager, Plantation Division, Andaman & Nicobar Islands V. Munnu Barrick & Others***, 2006 (4) SLR CSC 332.

30. In ***P.D. Aggarwal*** (supra), the Supreme Court observed:

“39. Decision of this Court in S.L. Kapoor v. Jagmohan (1980) 4 SCC 379 whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read “as it causes difficulty of prejudice”, cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinabove, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma (1996) 3 SCC 364 and Rajendra Singh v. State of M.P. (1996) 5 SCC 460 the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula (see Viveka Nand Sethi v. Chairman, J & K Bank Ltd. (2005) 5 SCC 337 and State of U.P. v. Neeraj Awasthi (2006) 1 SCC 667. See also Mohd. Sartaj v. State of U.P. (2006) 2 SCC 315.”

31. If the opportunity of defending himself is not denied to the delinquent, and he chooses not to avail of the same and does not even make a grievance in this regard, the statement made by a witness before the Disciplinary Authority in the presence of the delinquent, and of which he has notice, can certainly be relied upon

by the Disciplinary Authority. Therefore, the statement made by H.C. Jasbir Singh in the O.R. before the Disciplinary Authority in the presence of the respondent could have been relied upon by him while passing the order imposing punishment on the respondent.

32. We may also notice that the Tribunal proceeded itself to go into the aspect that the telephone number stated to have been called by H.C. Jasbir Singh (01398-275932) was not a telephone number of Delhi. The Tribunal, however, notes that the said number was perhaps the number of the phone in Bhatinda from which H.C. Jasbir Singh may have called. The Tribunal, however, finds a lacuna in the statement of H.C. Jasbir Singh by observing that he did not give the Delhi telephone number on which he contacted the respondent. A perusal of the statement of H.C. Jasbir Singh given by him on 18.08.2004 shows that he very clearly stated that he had contacted the respondent at his 'ghar' i.e. residence. In view of the above statement of H.C. Jasbir Singh, which has never been controverted by the respondent, there was no justification for the Tribunal to have disregarded the said statement of H.C. Jasbir Singh.

33. In our view, there was absolutely no justification for the Tribunal to have disregarded the reasons given by the Disciplinary Authority to disagree with the conclusions drawn by the Inquiry

Officer and to hold the respondent guilty of misconduct. The fact that the respondent did not inform the D.O./III Bn. DAP and the senior officers despite being the commanding officer of the escort party about his not feeling well at New Delhi railway station; the fact that he did not inform the said authorities either himself or through other guard members if he was himself not in a position to do so; the fact that he claims to have per chance met one Sh. Surender Kumar, his old acquaintance on the railway station when he was proceeding to get some medicine, who took him to far away hospital, i.e. Mohan Nursing Home, which is 15 kms. away from the railway station; the fact that he claims that he was in semiconscious condition and the said Nursing Home granted admission to the respondent merely on the basis of an incomplete entry made by the said Shri Surender Kumar (he did not even mention his address); the fact that according to H.C. Jasbir Singh, even on 09.09.2003, on telephonic contact at the respondent's residence, the respondent had informed him that he would join the party at Bhatinda; the fact that Mohan Nursing Home did not inform the police authorities about the admission of the respondent, even though they were not aware of his identity (as he is claimed to have been admitted in a semiconscious state); the fact that the respondent did not get the arms issued on 08.08.2003 from the kot like the other members of the escort party, are all

factors which make it probable that the respondent deliberately did not accompany the escort party as he did not intend to do so from the very beginning, and that he procured the medical report on which he later relied to cover up his lapse upon learning of the escape of the UTP. It is well settled that the standard of proof required in a departmental enquiry is not the same as that in a criminal trial, where guilt of the accused has to be proved beyond all reasonable doubt.

34. Learned counsel for the respondent has placed reliance on ***C.S.H.A University & Anr. v. B.D. Goyal***, JT 2001 (Supp. 1) SC 591. In this case, the Inquiry Officer had exonerated the delinquent against whom the departmental enquiry was held. The Disciplinary Authority directed fresh enquiry by another Inquiry Officer. No reasons in writing were given by the Disciplinary Authority for its disagreeing with the findings of the first Inquiry Officer. No reasons were either recorded for the need to appoint a second Inquiry Officer. In these circumstances, the Supreme Court quashed the second enquiry proceedings. We fail to appreciate the relevance of this decision in the facts of the present case. We have already extracted above the reasons given by the Disciplinary Authority in this case for disagreeing with the findings of the Inquiry Officer. Moreover, the Disciplinary Authority, while passing

his order, has again dealt with the submissions of the respondent in detail, and we have extracted the relevant portion herein above.

35. Learned counsel for the respondent has also placed reliance in decision of the Supreme Court in ***Union of India v. H.C. Goel***, (1964) 4 SCR 718. In this case, the Supreme Court firstly held that neither the findings recorded by the Inquiry Officer nor his recommendations are binding on the Disciplinary Authority. It was also held in the facts of the case that there was no evidence on record to sustain the finding that the charge had been proved.

36. So far as the first proposition aforesaid is concerned, the same is well settled and it is not even argued before us that the finding of the Inquiry Officer exonerating the responding was binding on the Disciplinary Authority. So far as the second aspect is concerned, the scrutiny, whether there is any relevant or germane evidence before the Disciplinary Authority to hold the delinquent guilty of misconduct and to punish him, has to be done in each case independently. As we have already discussed herein above, in our view, there was sufficient evidence on record to prove the misconduct of the respondent by application of the principles of preponderance of probability. Therefore, even this decision, in our view, has no application in the facts of the case.

37. For the aforesaid reasons, we are of the view that the impugned order cannot be sustained. Accordingly, we set aside the impugned order dated 11.04.2008 passed in O.A. 2627 of 2006 and restore the order passed by the Disciplinary Authority dated 13.07.2006 inflicting punishment of forfeiture of respondent's two years approved service permanently, entailing reduction in his pay from Rs.7425/- to Rs.7075/- and deciding that his period of suspension would be treated as period not spent on duty, i.e. *dies non*. The writ petition is allowed in terms thereof and the parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(ANIL KUMAR)
JUDGE

JANUARY 12, 2010
rsk/dp/sr