

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

% *Judgment Reserved on: May 02, 2013*
Judgment Pronounced on: May 30, 2013

+ **W.P.(C) 4387/2007**

EX.CONST.AJAYVIR GULIA Petitioner
Represented by: Mr.Shanker Raju, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Gautam Gupta, Advocate for
Mr.Aditya Madan, Advocate

Judgment Reserved on: May 06, 2013
Judgment Pronounced on: May 30, 2013

W.P.(C) 1026/2013

GOVT. OF NCT OF DELHI REPRESENTED BY:
COMMISSIONER OF POLICE Petitioner
Represented by: Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate

versus

RAVINDER SINGH Respondent
Represented by: Mr.Sachin Chauhan, Advocate

Judgment Reserved on: May 13, 2013
Judgment Pronounced on: May 30, 2013

W.P.(C) 7344/2012

GOVT. OF NCT OF DELHI Petitioner

Represented by: Ms.Sonia Arora, Advocate with
Mr.Varun Gupta, Advocate

versus

MAHESH KUMAR & ORS. Respondents
Represented by: Mr.Saurabh Ahuja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Notwithstanding the factual matrix of the three captioned writ petitions being different, they are being decided by a common decision on account of the singular commonality, which is at the core of the matter, pertaining to interpretation of Rule 12 of the *Delhi Police (Punishment & Appeal) Rules, 1980*. To highlight the core of the matter pertaining to the interpretation of the said Rule, the facts of the three cases would require to be noted, and as one would be noting the facts, the issue arising would emerge.

2. Ajayvir Gulia, hardly a 'vir' (has not displayed any act of bravery) seeks to be declared 'Ajay' i.e. 'victorious' by vanquishing the department i.e. Delhi Police and regain job as a Constable in Delhi Police. On a statement made to the police by Ms.'S' an FIR No.1065/2002 dated December 04, 2002 for offences punishable under Section 376/342/506/34 IPC read with Sections 25/27 of the Arms Act PS Nangloi was registered. As per the statement made by Ms.'S', she was seeking employment and came across an advertisement of Surrender

Security Services which had provided the mobile No.9811844420 and when contacted, a person who gave his name as Ajayvir spoke to her and told her to be in touch with the said person. On December 02, 2002, Ajayvir contacted her and requested her to come near Sunil Dairy, Chander Vihar, Nangloi on December 03, 2002, informing her that she would be picked up from there and taken to the place of the prospective employer for being interviewed. Accordingly on December 03, 2002 she went to Chander Vihar from where Ajayvir with two more persons picked her up in a Maruti car and took her to a building where, at a dagger point, Ajayvir raped her and a person who was being called Mukesh stood guard outside. After the rapist and his accomplice had left she went home and lodged a complaint over telephone No.100. The FIR was registered in the middle of the night at around 1.00 AM and this explains the date of the FIR being December 04, 2002.

3. The person Ajayvir turned out to be none else other than the petitioner of W.P.(C) No.4387/2007. He along with Mukesh Kumar were charge-sheeted in Sessions Case No.48/2003, at which apart from Ms. 'S', her sister Amita and Nisha, her brother-in-law Vipul and police officers associated with the investigation were cited as witnesses.

4. The first witness of the prosecution to be examined was Ms. 'S', and while deposing she gave a version at variance with her statement pursuant where to the FIR was registered. She stated that after completing graduation she came to Delhi in search of a job and on December 03 she was called for an interview at a company but could not find the address. A boy met her and told her that he could take her to the place which she was searching for and took her to a place where two persons were sitting.

One went outside and the other who remained inside raped her. She stated that the two accused present in Court were not the persons who were present in the room. Declared hostile and cross-examined she admitted her signatures on point 'A' on the statement Ex.PW-1/A i.e. the statement on which the FIR was registered but denied each and every content thereof.

5. Probably for the reason the prosecutrix had turned hostile, the learned Sessions Judge thought it imprudent to continue with the trial; opining probably that the destination had to be an acquittal. In a short and a cryptic decision dated September 09, 2003, a verdict of not guilty was pronounced. No other person cited as a witness and proposed to be examined to prove the charge was examined by the learned Court of Sessions.

6. Taking a serious view of an enlisted personnel of Delhi Police i.e. a Constable, not only enticing but raping an innocent young girl, invoking power under Article 311(2)(b) of the Constitution of India, an order was passed on December 04, 2002 terminating services of Ajayvir; and suffice would it be to state that it was obviously an order passed post-haste and without a proper application of mind for the reason the FIR itself was registered on December 04, 2002; and probably for the reason there was a hue and cry in the area and expecting adverse newspaper reports the next day, to silence the critics, the action was taken. It had to fall flat in a Court of Law, and indeed it was when OA No.2791/2003 filed by Ajayvir Gulia was allowed by the Central Administrative Tribunal on May 20, 2004; additionally for the reason by said date Ajayvir had been acquitted by the Court of Sessions on September 09,

2003. But, the Tribunal observed that disciplinary proceedings could be initiated against Ajayvir.

7. On July 05, 2004, departmental proceedings were initiated by issuing a summary of allegations which was served upon Ajayvir Gulia on August 27, 2004. The summary of allegations reads as under:-

“It is alleged that Const.Ajayvir Singh Gulia, No.2645/DAP (now 2574/DAP) while posted in III Bn.DAP on 03.12.2002, a P.C.R. call was received at 8.45 P.M. alleging rape in the area of Chander Vihar P.S.Nangloi, West Distt.Delhi. West Distt. Police immediately attended to got the complaint of victim Ms. ‘S’ and initiated legal action. One Ms. ‘S’ daughter of Shri Man Padhee aged 20 years lodged a complaint of rape by one Ajayvir @ babloo S/o Hari Singh, age 32 years R/o Village Badli, Distt. Jhajjar, Haryana and helped by Mukesh S/o Ram Kumar aged 33 years of the same Village. She narrated that she came to Delhi during January, 2002 and was staying with her brother-in-law Mr.Vipul Mishra at Hastal Uttam Nagar, Delhi. Three Months back she noticed a “Surendera Security Services” job opportunity in a News Paper where a mobile phone No.98118-44420 was given. She contacted the number and kept in touch with the person named Ajayvir and requested for the job offered through the news papers. She left her address and telephone No. with Ajayvir on 02.12.02. Ajayvir called Ms. ‘S’ and asked her to come for interview near Sunil Dairy, Chander Vihar, Nangloi, Delhi on 03.12.02 from where she will be picked up. Accordingly on 03.12.02 Ms. ‘S’ came to Chander Vihar. She was picked up by Ajayvir in Maruti Car in which two more persons were there. She was taken to one room (Kuldeep Properties Office) situated at Veer Bazar Road, Chander Vihar, Nangloi in 200 Sqr. Yards Plot. In the said room she was taken by Ajay Veer and raped at dagger point. Mukesh latched the door closed from outside and kept standing. Sometime later, she managed to come out and the assailants also left the place. She came to her home first and called up the 100 No.PCR at 08.45 P.M. in the evening On the complaint of victim Ms. ‘S’ a case vide FIR No.1065, dated

04.12.02 U/s 376/342/506/34 IPC, P.S.Nangloi was got registered and investigation was immediately taken up. Investigation revealed that the assailant Ajay Veer @ Bablo is a Delhi Police Constable posted in III Bn.DAP bearing belt No.2645/DAP (now 2574/DAP), PIS No.28901405 who has been arrested in above mentioned case. His associate Mukesh belongs to his village Badli, Distt. Jhajjar, Haryana had also been arrested by the Police in the same case.

The above facts and circumstances shows that Const.Ajay Veer, No.2645/DAP (now 2574/DAP) had actively participated in above noted case. Const.Ajay Veer, No.2645/DAP (now 2574/DAP) being a member of disciplined force was having great responsibility to protect the person and property of the citizens of the country. But instead of protecting the person he himself had been found involved in the aghast crime of rape proving himself unbecoming a member of disciplined force.

The above act on the part of Const.Ajay Veer, No.2645/DAP (now 2574/DAP), PIS No.28901405 amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of his official duties, unbecoming of a member of disciplined force which renders him liable for disciplinary action as punishment as envisaged in section 21 of Delhi Police Act, 1978.

8. As per the provisions of the 'Delhi Police (Punishment & Appeal) Rules, 1980' evidence was led by the department. Anita, sister of Ms. 'S' deposed as PW-1 before the Inquiry Officer and stated that in the month of February 2002 her sister, the prosecutrix, came to Delhi to reside with her and was on the lookout for a job. Through a newspaper advertisement she learnt that Surrender Security Services having contact mobile No.9811844400 could be the agency through which her sister could find a job and when contacted on the number a person named

Ajayvir told her sister that at present no job was available. On December 02, 2002, the person who was speaking by the name of Ajayvir told her sister that a job was available and told her that she would be interviewed around 4.00 PM and accordingly left the house. Her sister returned home at 8.00 PM and told her that Ajayvir had raped her at a knife point in the presence of an accomplice named Mukesh. Police was informed at No.100. Her sister led the Police to the spot where she was raped. Nisha PW-2, another sister of the prosecutrix deposed that her statement recorded by the police on December 04, 2002 was correct and she had no more to state. And suffice would it be to state that as per her statement recorded by the Police she stated facts deposed to at the inquiry by Amita PW-1. HC Rajbir Singh PW-3 and HC Shrikrishan PW-5 deposed about the FIR being registered on a statement made by the prosecutrix of being raped by Ajayvir and Mukesh standing on guard. SI Usha Sharma PW-6 deposed about the investigation conducted by her and Vipul, PW-4, the brother-in-law of the prosecutrix deposed of what was told to him by Amita.

9. As required by the Delhi Police (Punishment & Appeal) Rules 1980, a charge was framed against Ajayvir on January 26, 2005 which reads as under:-

“I, Mahabir Singh, Inspector/VIth Bn.DAP charge you Const.Ajay Vir Singh Gulia, No.2645/DAP (now 2574/DAP), PIS No.28901405 while posted in III Bn.DAP on 03.12.2002, a P.C.R. call was received at 8.45 P.M. alleging rape in the area of Chander Vihar P.S.Nangloi, West Distt. Delhi. West Distt. Police immediately attended to it got the complaint of victim Ms. ‘S’ and initiated legal action. One Ms. ‘S’ daughter of Shri Man Padhee aged 20 years lodged a complaint of rape by one

Ajayvir @ babloo S/o Hari Singh, aged 32 years R/o village Badli, Distt. Jhajjar, Haryana and helped by Mukesh s/o Ram Kumar aged 33 years of the same village. She narrated that she came to Delhi during January 2002 and was staying with her brother-in-law. Mr.Vipul Mishra at Hastal Uttam Nagar, Delhi. Three months back she noticed a "Surendera Security Services" job opportunity in a News Paper where a mobile phone No.98118-44420 was given. She contacted the number and kept in touch with the person named Ajayvir and requested for the job offered through the news papers. She left her address and telephone No. with Ajayvir on 02.12.02. Ajay Vir called Ms. 'S' and asked her to come for interview near Sunil Dairy, Chander Vihar, Nangloi, Delhi on 03.12.02 from where she will be picked up. Accordingly on 03.12.02 Ms. 'S' came to Chander Vihar. She was picked up by Ajay Vir in Maruti Car in which two more persons were there. She was taken to one room (Kuldeep Properties Office) situated at Veer Bazar Road, Chander Vihar, Nangloi in a 2000 Sqr.Yards Plot. In the said room she was taken by Ajay Veer and raped at dagger point Mukesh latched the door closed from outside and kept standing. Some time later, she managed to come out and the assailants also left the place. She came to her home first and called up the 100 No.PCR at 08.45 P.M. in the evening. On the complaint of victim Ms. 'S' a case Vide FIR No.1065, dated 04.12.02 U/s 376/342/506/34-IPC, P.S.Nangloi was got registered and investigation was immediately taken up. Investigation revealed that the assailant Ajay Veer @ Babloo is a Delhi Police Constable posted in III Bn.DAP bearing belt No.2645/DAP (now 2574/DAP), PIS No.28901405 who has been arrested in above mentioned case. Your associate Mukesh belongs to your village Badli, Distt. Jhajjar, Haryana had also been arrested by the Police in the same case. The charge has been framed on the basis of testimony of PWs.

The above facts and circumstances shows that you Const. Ajay Veer, No.2645/DAP (now 2574/DAP) had actively participated in above noted case. You Const. Ajay Veer, No.2645/DAP (now 2574/DAP) being a member of disciplined force was having great responsibility to protect the person and property

of the citizens of the country. But instead of protecting the person you yourself had been found involved in the aghast crime of rape proving yourself unbecoming a member of disciplined force.

The above act on the part of you Const.Ajay Veer, No.2645/DAP (now 2574/DAP), PIS No.28901405 amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duties which render you liable for punishment as envisaged in Section 21 of Delhi Police Act, 1978.”

10. Ajayvir submitted a statement of defence dated February 18, 2005 and did not produce any witnesses in defence. The Inquiry Officer submitted a report indicting Ajayvir relying upon the testimony of Amita and Nisha, the sisters of the prosecutrix and found corroboration in the contemporaneous events which transpired in the late night of December 03, 2002. The Inquiry Officer relied upon the testimony of SI Usha Sharma PW-6 who deposed what was told to her by the prosecutrix and how she apprehended Ajayvir. The Inquiry Officer highlighted that the name of Ajayvir Gulia was disclosed by the prosecutrix soon after she was raped.

11. Furnishing the report of the Inquiry Officer to Ajayvir Gulia for his response and rejecting his defence which was premised of he being acquitted by a learned Court of Sessions, the Disciplinary Authority accepted the report of the Inquiry Officer and imposed penalty of dismissal from service upon Ajayvir Gulia. Appeal filed was rejected. Challenge by Ajayvir Gulia to the penalty imposed before the Central Administrative Tribunal has been rejected by the Tribunal and hence we have Ajayvir Gulia covering the journey and reaching this Court.

12. The challenge is premised on Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 which reads as under:-

“12. Action following judicial acquittal –

When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

- (a) the criminal charge has failed on technical grounds, or*
- (b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or*
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or*
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or*
- (e) additional evidence for departmental proceedings is available.”*

13. The precise argument was that as per the Rule, when a Police Officer has been tried and acquitted by a Criminal Court, the officer cannot be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless either one or more of Clauses (a) to (e) of the Rule is attracted. It was urged that since the prosecutrix had turned hostile, it could not be said that the charge failed on a technical ground. It was

urged that neither the court nor the Deputy Commissioner of Police opined that the prosecutrix had been won over. It was urged that neither Clause (c) nor (d) nor (e) was ex-facie attracted; and since neither Clause (a) nor (b) were attracted, the disciplinary proceedings could not be initiated. Alternatively it was urged that the testimony of Amita and Nisha was hearsay and hence not admissible in evidence. Similar was the position with respect to the testimony of SI Usha PW-6.

14. Facts pertaining to W.P.(C) No.7344/2012 which concerns three police officers, HC Mahesh Kumar and Const.Satinder Kumar and Const.Dharmender Kumar are that on a statement made by one Sachin Bansal FIR No.123/2003 PS Kamla Market for offences punishable under Section 384/411/34 IPC was registered on April 17, 2003, as per which while commuting on a motorcycle and passing through Connaught Place at around 10:30 PM Sachin Bansal was halted near Thomson Road by a person in police uniform who was in the company of two civilians and was asked to produce a driving license and upon his failure to do so the person in police uniform demanded ₹500/- and since he i.e. Sachin Bansal only had ₹300/- with him, the said amount as also his mobile phone and the gold chain were taken away from him.

15. Whereas Const.Satender Kumar and Const.Dharmender Kumar were arrested on April 20, 2003, HC Mahesh Kumar absconded. Dispensing with an inquiry, all three were dismissed from service on April 22, 2003 and successfully challenged the said order when Original Applications preferred by them were allowed requiring all three to be reinstated. On November 22, 2005, the Disciplinary Authority directed

disciplinary proceedings to be initiated against all three resulting in a Summary of Allegations being drawn up and served alleging as under:-

"It is alleged that on 16.04. 2003 one Shri Sachin Bansal s/o Ashok Bansal r/o 5/33 Gajju Katra, Shahdara, Delhi while he was coming from Connaught Place on his bike, he was stopped at Thomson Road red light around 10.30 P.M. by a person wearing Delhi Police uniform and he was asked about the driving licence. In the meantime two persons in civil dress also reached there and stood by the said police person. Since the complainant was without license, they demanded ₹500/-from him and extorted ₹300/-from the complainant. Thereafter all the three persons took him to a park near Metro project, Thomson Road, Delhi and took his signature on of blank paper. The thereafter extorted his golden chain and mobile phone of 'Sony' under threat. The complainant was also taken to Connaught Place to get ₹20,000/-from him from ATM, but due to technical problem with the said ATM, no amount could be delivered to them. A case FIR no. 123/2003 u/s 384/411/34 IPC, PS Kamla Nagar has been registered on the above said complaint. During the course of investigation of the case it has transpired that the above said offence has been committed by three police personnel namely HC Mahesh Kumar No. 1883/C, Ct. Satender Kumar no. 1675/C (both posted in special staff, Central Distt.) And Ct. Dharmender Kumar no. 535/ C (posted in PS Chandni Mahal). Later on looted golden chain has been recovered from the possession of Ct.Satender Kumar and on the disclosure of Ct. Satender Kumar and Ct. Dharmender Kumar, the mobile phone has been recovered from room no. 22, where HC Mahesh Kumar was accommodated. Subsequently, Ct. Satender Kumar no. 1675/ C and Ct.Dharmender Kumar no. 535/C were arrested in the above noted case on 20.04.2003 while HC Mahesh Kumar no. 1883/C was reported to be absconding. Subsequently, HC Mahesh Kumar no. 1883/C was also arrested in the above noted case on 27.05.2003. HC Mahesh Kumar No. 1883/C were detailed to perform arrangement duty from 08:05 A.M. to 10:00 P.M. vide DD no. 4 dated 16. 04. 2003 special staff, Central district and after performing duties he committed

this above said offence in the area of Connaught Place. Ct.Dharmender Kumar no. 535/C (now 1080/C) was detailed to perform night patrolling duty in beat no. 1 of PS Chandni Mahal with Arms and Ammunition but instead of performing his duty in the area, he reached the area of Connaught Place and involved himself in criminal activities and Ct.Satender Kumar no. 1675/C was supposed to remain present in the special staff but she along with above two police personnel visited in the area of Connaught Place and permitted the above said offence."

16. The order initiating disciplinary proceedings was challenged by the three filing OA No.1273/2006. Before the same could be decided, trial pertaining to FIR No.123/2003 was over and the three were acquitted vide decision dated June 28, 2010. Notwithstanding the mobile phone of Sachin Bansal which was recovered from HC Mahesh Kumar and the recovery witness Const.Lakhan Singh PW-8 so deposed, and notwithstanding the gold chain extorted being likewise recovered and Const.Lakhan Singh PW-8 so deposing, the three were acquitted principally for the reason Sachin Bansal PW-2 turned hostile. He supported the version of ₹300/-, a mobile phone and a gold chain being extorted from him but absolved the three accused by not identifying the three as the accused.

17. During the pendency of OA No.1273/2006 which was filed by the the three police officials a Full Bench of the Tribunal decided OA No.2816/2008 Sukhdev Singh & Anr. Vs. Government of NCT of Delhi & Ors. on February 18, 2011, that a Delhi Police officer could be charge-sheeted departmentally notwithstanding he facing a criminal trial for the same acts, but if before the departmental proceedings were over, the officer concerned was acquitted at the criminal trial, the matter had to be re-visited by the Disciplinary Authority in light of Rule 12, for the reason

judicial verdicts have to be given precedence over decisions at the departmental proceedings. In other words, the effect of the decision of the Full Bench of the Tribunal would be to consider, in the light of the acquittal at the criminal trial, whether departmental proceedings could be initiated and for which Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 would apply.

18. The Original Application filed by HC Mahesh Kumar, Const.Satender Kumar and Const.Dharmender Kumar was disposed of by the Tribunal vide order dated March 14, 2011 requiring the Disciplinary Authority to take a decision keeping in view the law declared by the Full Bench of the Tribunal. It appears that in the meanwhile the Inquiry Officer appears to have served the Summary of Allegations upon the three resulting in the three filing OA No.4159/2010 questioning once again the disciplinary proceedings initiated against them, notwithstanding that they had challenged the same vide OA No.1273/2006 which was pending as of the year 2010. Be that as it may, OA No.4159/2010 was disposed of by the Tribunal vide order dated May 25, 2011 directing the Disciplinary Authority to decide whether the disciplinary proceedings could continue applying the law declared by the Full Bench of the Tribunal on March 14, 2011 and applying Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. On October 10, 2011 the Disciplinary Authority took a decision that the inquiry had to proceed, but did not advert to Rule 12 at all. The decision dated October 10, 2011 reads as under:-

“Consequent upon acquitted in case FIR No.123/2003 u/s 384/411/34 IPC, P.S.Kamla Market, Central District Delhi vide judgment dated 28.06.2010 passed by the

Hon'ble Court of Sh.Sandeep Garg, MM (Central) -05, Delhi the case of HC Mahesh Kumar, No.1883/C (now 121/c) (PIS No.28862362), Ct.Dharmender Kumar, No.1080/C, 2589/PCR (now 597/C) (PIS No.28940928) and Ct.Satender Kumar, No.2515/C (PIS No.28941696) and after receiving the judgment/order in O.A. Nos.1273/3006, 4159/2010 & MA No.3132/2010 – Mahesh Kumar & others Vs. GNCT, Delhi & others their case has been examined under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 and it has been decided that the departmental enquiry pending against them vide this office order No.7827-40/HAP/AC-II/C dated 22.11.2005 and kept held in abeyance vide O.A.Nos.1273/2006, 4159/2010, & MA No.2132/2010- Mahesh Kumar & others Vs. GNCT, Delhi & others is re opened and entrusted to Insp.Awanish Chander/ Insp.Vigilance for its completion. The EO will submit his progress report in the DE to the disciplinary authority on every 12th and 27th day of each month. Their suspension period will be decided later on. The name of Const.Satender Kumar, No.2515/C has also been removed from the list of police personnel facing criminal case.

Let them be informed accordingly.

*Sd/-
(ASLAM KHAN)
ADDL.DY.COMMISSIONER OF POLICE,
CENTRAL DISTT., DELHI”*

19. This led the three to file OA No.4271/2011 challenging the departmental inquiry initiated against them and permitted to be continued as per order dated October 10, 2011, principally alleging that the evidence cited before the learned Court of Sessions could not be re-led at the departmental inquiry unless the exception carved out vide Clauses (a) to (e) of Rule 12 was/were attracted; and since the order dated October

10, 2011 did not hold that any was attracted, the same was liable to be quashed.

20. Vide order dated March 07, 2012 OA No.4271/2011 has been allowed and the disciplinary proceedings have been quashed.

21. The factual matrix pertaining to WP(C)No.1026/2013 which concerns Const.Ravinder Singh is that on a statement made by one Chatar Singh, FIR No.152/2000 PS B.B.Nagar District Bulandshaher, U.P. for offences punishable under Sections 364/302/201/120-B IPC was registered on July 19, 2000 because as per Chatar Singh his son along with four boys had been taken to a dam on Bamba river at Pastapur village and had been killed.

22. On July 01, 2001 a constable named Kishor Kumar died at Batra hospital, New Delhi due to gunshot wounds.

23. Investigation, as claimed by U.P. Police, revealed that petitioner as also one Ranjit Singh, Vijay Bahadur, Anil Tomar, Rajender and Sisharpal Singh were a gang indulging in gangsterism and kidnapping people for ransom. During investigation the clothes of the missing children were statedly recovered on disclosure statement made by the accused, which included the petitioner. A Tata Sumo vehicle was also recovered. At the trial the witnesses turned hostile. Vijender Singh PW-10 and Chatar Singh PW-1, the two fathers of the five kidnapped boys also turned hostile and disowned the disclosure statement of the accused being made in their presence as also recoveries of clothes of their children got effected by the accused in their presence. Notwithstanding the police officers supporting the recoveries, the trial resulted in an acquittal of all the accused on June 02, 2001.

24. But before that, when the petitioner was in judicial custody and lodged at District Jail Bulandshaher, a detention order under the National Security Act was passed against the petitioner and other co-accused which was attempted to be served upon them by SI Nek Ram Singh in jail and as per SI Nek Ram Singh the petitioner and co-accused threatened him questioning him as to how come he does not know that they are a terror and would ensure that his i.e. SI Nek Ram Singh's children would also meet the same fate as the children of Chatar Singh and Vijender Singh met. On the statement made by SI Nek Ram Singh FIR No.495/2000 PS Sikandarabad, District Bulandshaher, U.P. was registered against Ravinder Singh and others for offences punishable under Sections 353/506 IPC; and the trial is still on.

25. On November 18, 2009, the Deputy Commissioner of Police drew up a Summary of Allegations, since a decision was taken to initiate departmental proceedings against Ravinder Singh. The Summary of Allegations read as under:-

“It is alleged against constable Ravinder Singh, No.503/L (PIS No.28890716) that he was arrested in case FIR No.152/2000 u/s 364/120-B/302/201 IPC P.S. BB Nagar, District Bulandshahar 12.9.2000 w.e.f. 9.9.2000 i.e. the date of arrest. Later on, he obstructed and manhandled the server of NSA for which a case FIR No.495/2000 147/353/506 IPC, P.S. Sikandrabad District Bulandshahar, was registered. He has been acquitted in case FIR No.152/2000 by the ADSJ Bulandshahar UP vide judgment dated 2.6.2001. However, case FIR No.495/2000, 147/353/506 IPC, PS Sikandrabad District Bulandshahar, UP is pending trial in the Court of CJM/Bulandshahar, UP.

The above act on the part of Constable Ravinder Kumar No.503/L amounts to gross misconduct and indulgence in unlawful activities by taking advantage of his post which renders him liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

26. Three witnesses, SI Nek Ram Singh, HC Inder Prakash and Const.Krishan Pal were examined by the Inquiry Officer as PW-1, PW-2 and PW-3 and all of them deposed in harmony with the Summary of Allegations pertaining to SI Nek Ram Singh being threatened by the accused persons when he went to serve the orders passed under the National Security Act against Ravinder Singh and other accused persons who were facing trial along with Ravinder Singh in FIR No.152/2000. SI Nek Ram Singh deposed that the accused persons told him that they knew where his children were studying and if SI Nek Ram Singh held their lives dear, he should not proceed further. He deposed that all accused appeared to be dead drunk even in the jail. The other two witnesses corroborated SI Nek Ram Singh. But surprisingly, on being cross-examined, all three stated that Ravinder Singh stood as a silent spectator when other co-accused threatened and abused SI Nek Ram Singh.

27. As required by the Delhi Police (Punishment & Appeal) Rules, 1980 the Inquiry Officer framed a charge which reads as under:-

“I, Surender Jeet Singh, Inspector Mounted P & L, E.O, Delhi on the basis of evidence/documents brought on the basis of evidence/documents brought on the DE file during the course of DE proceedings, do hereby charge you Const. Ravinder Singh No.503/L (PIS No.288907160 that you, while serving in Delhi Police, were arrested in case FIR No.152/2000 u/s 364/120-B/302/201 IPC PS BB Nagar, Distt. Bulandshaher UP for which you were placed

under suspension vide order No.10422-40/HAP(P-IV)/PCR dated 12.9.2000 w.e.f 9.9.2000, the date of your arrest.

I further charge you Const. Ravinder Singh No.503/L that while you, along with your co-accused Sahansar Pal, Ranjeet, Vijay Bahadur and Anil Tomer, were under judicial custody in Distt. Jail, Bulandshaher in the above said case, the Distt. Magistrate, Bulandshaher had passed the order under NSA vide No.1297/Nyaye Sahayak dated 09.11.2000 against you for the reasons mentioned in detail in the endorsed NSA to SO/PS BB Nagar for service upon you. When SI Nek Ram Singh Pal, SO/PS BB Nagar, along with Const. Krishna Pal Singh No.901/415/CP, Narender Singh No.1407 and Jai Bir Singh No.1097 had gone to Distt. Jail Bulandshaher to serve the copy of the above said NSA upon you, your co-accused Sahansar Pal, in a threatening way in your presence denied to receive the copy of NSA saying that "We persons will not receive the NSA" your another co-accused Vijay Bahadur took one set of NSA, and tried to treat the same in your presence but the same was taken by SI Nek Ram Singh Pal from his hand. Your above said both the co-accused also gave threats to SI Nek Ram Singh Pal and Const. Krishna Pal that whether their children were not loved to them and they know where their children were studying. They will kidnap their children then they will enjoy the taste of preparing the NSA. It clearly indicates your tacit consent in the above said threats/action. After the above incident another case FIR No.495 was also registered vide crime No.679/2000 u/s 147/353/506 IPC at PS Sikandrabad, Bulandshaher on 13.11.2000, which is under trial in the Court of JM-1, as case No.2678/09 State vs. Ranjeet.

The photocopy of the NSA order, its enclosure, duly attested received from the Sr.Distt.Magistrate-Admn.Bulandshahar vide letter No.83/Nyaye Sahayak dated 14.01.2011 and photocopy of letter No.Abhi-Buland

Vividh/11/21 dated 22/24-01-2011, duly attested, received from Sr.Prosecuting Officer, Bulandshahar, during the course of DE proceedings are being delivered to you Const.Ravinder Singh No.503/L along with charge.

Although you and your co-accused persons have been acquitted by the Sr. Sessions Judge, Bulandshahar in case FIR No.152/2000 vide judgment dated 2.6.2001 due to failure of prosecution to prove the charge, but your involvement in the above said criminal cases/criminal activities cannot be ruled out, which is not acceptable/desirable from a member of Delhi Police/Public servant like you.

The above act on the part of you Const.Ravinder Singh No.503/L amounts to gross misconduct, indulgence in criminal and unlawful activities are unbecoming of a police officer/public servant, which renders you liable for punishment under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980.”

28. Const.Ravinder Singh submitted a Statement of Defence highlighting that on June 02, 2001 he was acquitted in FIR No.152/2000 and as regards FIR No.495/2000 he stated that the trial was continuing.

29. The Inquiry Officer opined that notwithstanding Ravinder Singh being acquitted in one FIR and trial was continuing in the second, a member of a disciplined force could not indulge in criminal activities and his continued association with the police force would damage the image of the police force. Vide order dated August 18, 2011 the Disciplinary Authority levied penalty of forfeiture of two years' approved service for a period of two years entailing proportionate reduction in pay which was upheld by the Appellate Authority vide order dated March 14, 2012 resulting in Const.Ravinder Singh filing OA No.1535/2012 which has

been dismissed by the Tribunal vide order dated October 30, 2012 observing that if witnesses have turned hostile, Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 was not attracted. Needless to state case of Ravinder Singh before the Tribunal was that since at the trial pertaining to FIR No.152/2000 he was acquitted after evidence was led the department could not take action against him by using the same evidence at the domestic inquiry.

30. We recap the basic legal issue which arises for consideration in the three captioned appeals. It relates to an interpretation of Rule 12 of the *‘Delhi Police (Punishment & Appeal) Rules, 1980’*, which we have reproduced in paragraph 12 above. Whereas Ajayvir Gulia urges that notwithstanding Amita, Nisha, Rajvir Singh and Usha Sharma not being examined at the criminal trial when he was charged for having committed an offence punishable under Section 376 IPC, said four persons were cited as witnesses and thus whether the evidence was actually led or not, no departmental action could be taken against him because the criminal charge did not fail on technical grounds, neither the Court nor the Deputy Commissioner of Police has opined that the prosecutrix Ms. ‘S’ had been won over, nor was any additional evidence sought to be proved. Mahesh Kumar, Satender Kumar and Dharmender Kumar also argue on the same line by urging that the view taken by the Full Bench of the Tribunal requires application of Rule 12. The plea of Ravinder Singh is that pertaining to FIR No.152/2000 wherein he was acquitted, Rule 12 would be attracted and as regards FIR No.495/2000 he urges that the trial is still on.

31. Rule 12 of the ‘*Delhi Police (Punishment & Appeal) Rules, 1980*’ prohibits a departmental inquiry on the same charge or on a different charge *upon the evidence cited in the criminal case, whether actually led or not* unless either one or more of clauses (a) to (e) is attracted.

32. The argument of learned counsel for the petitioners was premised on the assumption that evidence proposed to be led at the criminal trial would be ‘*evidence cited*’ within the meaning of Rule 12 and the expression ‘*whether actually led or not*’ would make it irrelevant for the purposes of the departmental inquiry that at the criminal trial said evidence was not led.

33. The argument overlooks the fact that the meaning of *evidence* as propounded by Phipson (Phipson on evidence 17th Edition) is:-

“Evidence, as used in judicial proceedings, has several meanings. the two main senses of the word are: first, the means, apart from argument and inference, whereby the court is informed as to the issues of fact as ascertained by the pleadings; secondly, the subject matter of such means. The word is also used to denote the fact that some fact may be admitted as proof and also in some cases that some fact has relevance to the issues of fact. In a real sense evidence is that which may be placed before the court in order that it may decide the issues of fact.....Evidence, in the first sense means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in dispute. In the second sense it means the content of that testimony.”

34. Wigmore on evidence defines evidence as:-

“Any knowable fact or group of facts, not a legal or logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth

of a proposition, not of law or of logic, on which the determination of the tribunal is to be asked.”

35. The Indian Evidence Act 1872 defines evidence to mean:

“Evidence” – “Evidence” means and includes –

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry,

such statements are called oral evidence;

(2) all documents including electronic record produced for the inspection of the Court,

such documents are called documentary evidence.”

36. Thus, the word *evidence*, by its very definition means statements/documents which have been produced for the inspection of the Court and on basis whereof a Court decides a lis. Merely because a person is named as a witness and the statement under Section 161 Cr.P.C. recorded during investigation is filed along with the charge sheet and copy supplied to the accused would not mean that the person concerned i.e. the witness becomes evidence cited or the person’s statement under Section 161 Cr.P.C. become evidence cited. It is trite that statements recorded under Section 161 Cr.P.C. cannot be used other than to confront a witness.

37. It is apparent that the word ‘*cited*’ in Rule 12; being a part of the composite words ‘*evidence cited*’ is accordingly used as a verb and not to describe evidence. Thus, the next words ‘*whether led or not*’ have to be read down so as to not render meaningless or absurd the words ‘*evidence cited*’. To put it pithily, ‘*evidence cited*’ cannot include what has not

been led at the trial i.e. it means oral testimony of witnesses and/or documentary evidence proved.

38. It is no doubt true that every attempt has to be made to interpret a statute, which would include even a Rule, in a manner that no part thereof becomes redundant i.e. Rule against redundancy has to be followed; ordinarily one should not lead oneself to hold that a word or a group of words in a statute are surplus. But situations may arise when, to give effect to the intention of the legislature, the un-skillfulness of the draftsman in introducing certain words in the statute may have to be taken into account and those words have to be ignored to give effect to the intention of the legislature.

39. Section 1 of the Natal Ordinance of 1856 came up for interpretation in the decision reported as (1886) XI AC 627 Salmond Vs. Duncombe. The meaning of the word '*resident*' in the context of the expression '*as if such natural born subject resided in England*' was under consideration. Lord Hobuse observed:-

"It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's un-skillfulness or ignorance of law..... Very likely the draftsman, whose want of skill is shewn by other expressions in the ordinance, attributed to residence a legal effect which it does not possess..... And he then adds words which may add nothing to what has gone before, but which ought not without necessity to be construed so as to destroy all that has gone before."

40. In the decision reported as (1990) 1 All. ER McMonagle Vs. Westminster City Council, construing the Local Government (Miscellaneous Provisions) Act 1982, the words '*which are not unlawful*' were found to be surplus and ignored. The court opined:-

“I entertain no doubt in my own mind that we should be giving effect to the true intention of the legislature if we could avoid this absurdity by treating the phrase which is not unlawful in each of the sub-paragraphs of para 3A where it appears as mere surplusage. I recognize that this is a strong course to take in construing a statute and one which imputes an unusual degree of ineptitude to the draftsman. The difficult question is whether in the circumstances the course I would choose, if it is available, is a legitimate judicial exercise in construction or whether it must be left to the laborious process of amending legislation to make sense of the statute. The presumption that every word in the statute must be given some effective meaning is a strong one, but the Courts have on occasion been driven to disregard particular words or phrases when, by giving effect to them, the operation of the statute would be rendered insensible, absurd or ineffective to achieve its evident purpose.”

41. In the decision reported as 100 (2002) DLT 385 Government of NCT of Delhi & Ors. Vs. Rajpal Singh Rule 12 of the Delhi Police (Punishment & Appeal) Rules 1980 was given a purposive interpretation to resolve the issue of an acquittal rendered on giving the benefit of doubt i.e. an acquittal which was not an honourable acquittal vis-à-vis a departmental inquiry. The Court held that since the departmental inquiry had commenced prior to the acquittal at the criminal trial the departmental proceedings could continue. The Court highlighted that the heading of the Rule: ‘*Action following judicial acquittal*’ made it clear that what was prohibited was taking departmental action after a police officer had been acquitted and ex-facie had no concern where the departmental proceedings were initiated simultaneously or soon before or soon after the charge was laid at the criminal trial.

42. Section 21 of the Delhi Police Act 1978 reads as under:-

“21. Powers of punishment.– (1) Subject to the provisions of Article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:-

- (a) dismissal;*
- (b) removal from service;*
- (c) reduction in ranks;*
- (d) forfeiture of approved service;*
- (e) reduction in pay;*
- (f) withholding of increment; and*
- (g) fine not exceeding one month’s pay.*

(2) Subject to the rules–

(a) any police officer specified in sub-section (1) may award the punishment of censure to any police officer of subordinate rank;

(b) the Assistant Commissioner of Police may award the punishment of censure to police officers of, or below, the rank of sub-Inspectors of Police;

(c) any police officer of, and above, the rank of Inspector may award punishment drill not exceeding fifteen days or fatigue duty or any other punitive duty to constables.

(3) Nothing in sub-section (1) or sub-section (2) shall affect any police officer’s liability for prosecution and punishment for any offence committed by him.

(4) The Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional

Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School, Assistant Commissioner of Police, or any other police officer of equivalent rank may suspend any police officer of subordinate rank who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.

(5) An Inspector of Police may suspend any police officer below the rank of Sub-Inspector of Police, who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.”

43. We highlight that the power to inflict punishments flows from Section 21. After enlisting the punishments in sub-Section 1 and sub-Section 2, Sub-Section 3 makes it clear that a police officer would be liable to be simultaneously prosecuted as well as punished departmentally for an offence committed by him. To put it pithily, sub-Section 3 recognizes that for the same act pertaining to it being a civil wrong departmental action can be taken and pertaining to it being a penal offence, action under the penal law can be taken.

44. In the decision reported as JT (2002) Supp. 1 SC 520 Secretary Ministry of Home Affairs & Anr. Vs. Tahir Ali Khan Tyagi, noting that at the criminal trial, witnesses had turned hostile, the Supreme Court observed that Rule 12 did not prohibit a departmental inquiry. The decision brings out that when witnesses turned hostile the logical inference would be that they have been suborned. It need not be so expressly stated.

45. We now turn to the facts of each case.

46. Pertaining to Ajayvir Gulia, as we have noted above, since the prosecutrix turned hostile, the learned Court of Sessions did not deem it appropriate to record any further evidence and notwithstanding Amita, Nisha, Rajvir Singh, HC Shrikrishan and SI Usha Sharma cited as witnesses, without examining them, Ajayvir was acquitted.

47. Our interpretation of '*evidence cited*' and the expression '*whether actually led or not*'; the latter being surplus in the Rule, leads us to hold that the department was fully empowered to take departmental action against Ajayvir Gulia.

48. We have briefly noted hereinabove in paragraph 8 the testimony of Nisha and Amita, the sisters of the prosecutrix and the same would bring out that soon after the traumatic experience faced by the prosecutrix who was lured to the place where she was raped, she narrated the traumatic experience to her two sisters and she named Ajayvir Gulia. The two witnesses have deposed that the prosecutrix, their sister was looking for a job and had come across an advertisement by a placement agency and a mobile number 9811844400 was disclosed to her and that on the day of the incident she left Anita's house telling her that a person named Ajayvir had told her to reach a place from where she would be taken for an interview. The testimony of Anita, corroborated by Nisha clearly brings out that the prosecutrix had left the house to meet a person named Ajayvir. She returned home after being ravished and told that Ajayvir had raped her. The excited utterances of the traumatized victim would not be hearsay evidence even as per strict standards of criminal law; these utterances would be admissible in evidence as *res gestae* evidence.

49. In the decision reported as 483 US 171 (1987) Bourjaily Vs. United States where a rape victim had turned hostile, but her excited utterances spoken of soon after the unfortunate incident being proved through witnesses, the direction to the jury to ignore the testimony of the prosecutrix and take into account res gestae evidence resulting in the accused being convicted was upheld.

50. In the decision reported as (1977) 2 SCC 491 State of Haryana & Ors. v. Rattan Singh the Supreme Court categorically held that at domestic inquiries the strict and sophisticated rules of evidence are not applicable and all materials which are logically probative for a prudent mind are permissible and that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In said case, statements made by passengers of the bus to the raiding party were held admissible in evidence against the conductor of the bus who had charged the fare as per the statements made, but had not issued the tickets; the passengers not being examined at the departmental inquiry.

51. Thus, for our reasons given hereinabove W.P.(C) No.4387/2007 filed by Ajayvir Gulia is dismissed.

52. Pertaining to W.P.(C) No.7344/2012 which concerns HC Mahesh Kumar, Const.Satender Kumar and Const.Dharmender, we note that before the three were acquitted at the criminal trial, departmental proceedings had already been initiated and thus the view taken by the Full Bench of the Tribunal, which has been followed by the Division Bench of the Tribunal to hold in favour of the three respondents, is contrary to the law declared by the Division Bench of this Court in Rajpal Singh's case (supra). The departmental proceedings against the

three persons could not be set aside by the Tribunal applying Rule 12 of the Delhi Police (Punishment & Appeal) Rules 1980. Besides, the three had not earned an honourable acquittal. Sachin Bansal had turned hostile. From the summary of allegations against the three, it is apparent that Sachin Bansal was threatened to part with money, a gold chain and a mobile phone and was also taken to Connaught Place to force him to withdraw ₹20,000/- from an ATM. The looted gold chain and mobile phone were recovered from the accused, as per the summary of allegations. We are not surprised that Sachin Bansal turned hostile. It is apparent that he was suborned. The three accused may have earned the acquittal at the criminal trial, where standard of proof is high, and Courts have taken the view that if eye witnesses turn hostile, recovery of objects such as mobile phones and gold chains, though admissible in evidence, would be insufficient for the evidence to attain the high standard of proof. But, at a domestic inquiry the level of proof being lower, issues have to be considered accordingly.

53. Accordingly, W.P.(C) No.7344/2012 is allowed and the order dated March 07, 2012 allowing OA No.4271/2011 is set aside and the Original Application is dismissed. The department shall be free to continue with the departmental proceedings against the three officers from the stage they got aborted due to the impugned decision being passed.

54. But, we must speak a word and bring on record our anguish at the manner in which the Disciplinary Authority has dealt with the matter. As noted by us in paragraph 18 above, when the Tribunal directed vide its decision dated May 25, 2011 that the continuation of the disciplinary

proceedings be decided keeping in view the law declared by the Full Bench of the Tribunal on March 14, 2011, the Additional Commissioner of Police passed a mindless order which we have reproduced in paragraph 18 above. He just did not apply himself. We are reserving a further comment after we discuss the relevant facts pertaining to Const.Ravinder Singh.

55. Pertaining to W.P.(C) No.1026/2013 relating to Const.Ravinder Singh, we must at the outset record our anguish at the manner at which officers of Delhi Police have treated a very serious incident.

56. Const.Kishor Kumar, working with Delhi Police, admittedly died on July 01, 2001 at Batra Hospital due to gun shot wounds. He was allegedly a part of a gang, comprising Const.Ravinder Singh and 5 other persons named Ranjeet Singh, Vijay Bahadur, Anil Tomar, Rajender and Shisharpal Singh who would kidnap people for ransom and even commit the crime of murder. Ignoring all other facts, Const.Kishor Kumar's death due to gun shot wounds by itself ought to have led the Commissioner of Police to have conducted a thorough investigation concerning the death of Const.Kishor Kumar. What kind of weapon was used causing gun shot wounds to him? Whether it was a case of an inter gang rivalry? These questions loom large and needed to be answered after a thorough investigation. No attempt whatsoever has been made to do so.

57. As noted above, Const.Ravinder Singh was an accused in FIR No.152/2000 for offences of kidnapping, murder and conspiracy. He was an accused in FIR No.495/2000 for offences punishable under Section 353/506 IPC. In the former FIR he was acquitted. Surprisingly, the

parents of the kidnapped children whose bodies were never found turned hostile and did not support the recovery of the clothes of their children. In the second FIR, the trial is on. The second FIR lodged on the statement of SI Nek Ram Singh who went to serve the detention order passed under the National Securities Act upon Ravinder Singh and his co-accused would show that desperate nature of Ravinder Singh and the co-accused. The fact that at the departmental inquiry SI Nek Ram and two other police officers diluted the charge against Ravinder Singh by stating that his co-accused had threatened them whilst Ravinder Singh stood silently itself proves that Ravinder Singh had enough muscle power to substantially silence, if not fully, even police officers. Why was the power under Article 311(2)(b) not invoked? The Commissioner of Police has much to answer.

58. The clumsy manner in which the Commissioner of Police has acted while drawing up the summary of allegations against Const. Ravinder Singh is evidenced by the fact that there is a reference in the summary of allegations to charge sheet No.152/2000 as also FIR No.495/2000. Mere referring to somebody being an accused in two FIRs is neither here nor there for the reason merely being an accused is no misconduct. The misconduct is the illegal acts performed by the noticee. We do not find a mention of said acts.

59. As per the Delhi Police (Discipline & Appeal) Rules, 1980 the procedure for a departmental inquiry is to issue a summary of allegations and record evidence and if material surfaces to frame a charge, a statement of charge is drawn up. At said stage the charged officer can recall the witnesses for cross-examination and lead defence evidence.

60. From the facts noted in paragraph 26 above, it is apparent that the three witnesses examined pertained to FIR No.495/2000 and no witness deposed any fact pertaining to FIR No.495/2000. The charge framed, contents whereof we have reproduced in paragraph 27 above, would evidence that a mere narration was made to Ravinder Singh being an accused in FIR No.152/2000 and the substratum of the charge pertained to the acts of threatening SI Nek Ram Singh when he went to serve the detention order on Ravinder Singh i.e. assault and using criminal force to deter a Government servant from discharging duties and intimidating SI Nek Ram.

61. The manner in which the statement of imputation and the charge has been drawn up may have given birth to an unnecessary controversy i.e. no acts attributable to Const.Ravinder Singh being alleged pertaining to kidnapping and murder and yet a mention of the FIR being made.

62. But, from the punishment inflicted, it is apparent that the Disciplinary Authority has correctly read the charge drawn up to mean that Const.Ravinder Singh was facing the departmental inquiry for his acts of threatening SI Nek Ram Singh.

63. Correctly understanding the fact that Const.Ravinder Singh was proceeded departmentally against only for the act of threatening SI Nek Ram Singh, we cannot concur with the view taken by the Tribunal as per its decision dated October 30, 2012 for the reason the Division Bench of this Court in Rajpal Singh's case (supra) has opined that it is permissible to initiate departmental proceedings pending criminal trial. We highlight that Consts.Ravinder Singh is still facing a trial in FIR No.495/2000.

64. Before bringing the curtains formally down, we cannot but resist to note that the three cases bring out a very disturbing trend which we are witnessing off lately concerning Delhi Police personnel. At the constabulary level we find that police officers are able to suborn witnesses and are getting away at the criminal trials and also at the domestic inquiries. The reason appears to be two fold. Firstly the *Delhi Police (Punishment & Appeal) Rules 1980* and especially Rule 12, 15(2) and 16 which are very heavily loaded in favour of the delinquents. We see no reason why the power to initiate disciplinary proceedings against officials of Delhi Police be curtailed as we find under Rule 12, 15(2) and 16. Why does the Commissioner of Police not consider simply adopting the CCA (CCS) Rules 1965 which strike a healthy balance vis-à-vis the rights of the charged officer and the department? Here we have before us Ajayvir Gulia who had enticed, entangled and raped a young girl. He suborned her to turn hostile. But fortunately we have sufficient res gestae evidence against him. We have before us Const.Ravinder Singh who was charged for kidnapping and murder as also for conspiracy. He got away at the criminal trial and so did his co-accused because two fathers who lost their sons turned hostile and did not support recoveries of clothes of children which they had allegedly witnessed. What further proof of Const.Ravinder Singh's clout can we have other than his audacity to threaten SI Nek Ram and somewhat silence him. We have before us three force personnel, HC Mahesh Kumar, Const.Satender Kumar and Const.Dharmender Kumar, who way lay Sachin Bansal; rob him of ₹300/-, a gold chain and a mobile phone. They take him to an ATM to use his debit card to withdraw money in spite of the fact that

Sachin Bansal saw the three for a sufficient duration of time, while supporting the incident, he did not identify the three force personnel. What more proof do we have of the clout of these three persons? Why is the Commissioner of Police retaining departmental inquiry rules which favour such kinds of police personnel? We are left wondering because in case after case learned counsel who appear for the Commissioner of Police lament that even they find it difficult to support the departmental actions because of the heavily loaded law in favour of the delinquent police personnel. This would explain our decision being a bit lengthy and a deep dive into the factual arena.

65. W.P.(C) No.4387/2007 is dismissed. W.P.(C) No.1026/2013 and W.P.(C) No.7344/2012 are allowed. Impugned order dated April 05, 2007 challenged in W.P.(C) No.4387/2007 passed by the Tribunal is upheld. Impugned order dated March 07, 2012 challenged in W.P.(C) No.7344/2012 passed by the Tribunal is dismissed. Impugned order dated October 30, 2012 challenged in W.P.(C) No.1026/2013 passed by the Tribunal is also dismissed. OA No.1746/2005, OA No.4271/2011 and OA No.1535/2012 are accordingly dismissed.

66. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 30, 2013
mamta