

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

% *Judgment Reserved On: September 25, 2013*
Judgment Delivered On: October 11, 2013

+ **W.P.(C) 1959/2012**

RAJEEV Petitioner
Represented by: Ms.Avnish Ahlawat, Advocate with
Ms.Tania Ahlawat, Advocate

versus

COMMISSIONER OF POLICE & ORS. Respondents
Represented by: Mr.V.K.Tandon, Advocate with
Ms.Sucheta Kumari, Advocate for R-
1 to R-4

W.P.(C) 1960/2012

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

PRADEEP NANDRAJOG, J.

1. Two Original Applications No.3102/2009 and 613/2010 filed by the

petitioner have been dismissed by a composite order dated April 25, 2011 passed by the Central Administrative Tribunal upholding penalty of permanent forfeiture of one year approved service upon the petitioner as also the order cancelling petitioner's candidature to the post of Sub-Inspector (Executive).

2. Enrolled as a Constable with the Delhi Police in the year 2007, on the allegation that he and ASI Anil Kumar had demanded and received illegal gratification from one Sh.Katuri Srinagesh; ASI Anil Kumar did so while issuing the Police Clearance Certificate and the petitioner did so when he visited the house of Sh.Katuri Srinagesh to conduct the verification required by the concerned department to issue/renew the passport of Sh.Katuri Srinagesh, a joint inquiry was conducted against ASI Anil Kumar and the petitioner. Both were indicted and penalty levied.

3. Since only Ct.Rajeev has challenged before us the penalty levied, we would henceforth be noting facts relevant to discuss the case projected by him.

4. As regards the second Original Application filed by the petitioner which has been dismissed by the Tribunal, we note that the petitioner successfully cleared the examination for direct appointment as a Sub-Inspector (Executive) but found the appointment eluding him on account of the fact the department cancelled his candidature with reference to his service record, being the penalty levied upon him.

5. As required by the Delhi Police (Punishment & Appeal) Rules, 1980, the domestic disciplinary inquiry commenced when a summary of allegation was drawn up on May 21, 2007 against the petitioner and ASI Anil Kumar, which reads as under:-

“It is alleged against ASI (Min) Anil Kumar No.1540-D (PIS No.27890033) posted in General Branch, South Distt. And HC. (Exe) Rajeev No.279/SD (PIS No.28930293) P.S. C.R.Park, South Distt. that one, Shri Katuri Srinagesh, R/o Pocket-B 27/C, Gangotri Enclave, Alaknanda New Delhi, visited C.R.Park Police Station on 15.2.07 for Police Clearance Certificate where he was advised to go to DCP/South Distt. Office, Hauz Khas, New Delhi, for obtaining the application form and submitting the same duly filled in & signed by him. Accordingly he visited the South District Office, filled up the application form and took back the same by hand to P.S. C.R.Park on the same day after due formalities. The verification was marked to HC Rajeev, No.279/SD who conducted the verification and allegedly took ₹700/- from Sh.Katuri Srinagesh for doing his work. On 19.2.2007 Sh.Katuri Srinagesh visited General Branch South Distt and submitted the verification report personally where ASI (Min) Anil Kumar, No.1540/D, of General Branch, asked him to come on the following day i.e. on 21.2.07. He again went the General Branch on 21.02.07 to get the requisite certificate which was issued to him by ASI (Min) Anil Kumar, No.1540-D, General Branch, South Distt. after allegedly accepting bribe money of ₹500/- from Katuri Srinagesh.

The above act on the part of ASI (Min) Anil Kumar No.1540-D and HC (Exe) Rajeev No.278/SD amounts to their involvement in corrupt practices, gross, misconduct dereliction in the discharge of official duty and unbecoming of a Govt. servant which renders them liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980.”

6. The summary of allegation brings out that as per the department the role of ASI Anil Kumar and that of the petitioner was distinct and severable. As per the allegation, the petitioner received ₹700/- from Sh.Katuri Srinagesh when he went to his house to conduct the verification and ASI Anil Kumar received ₹500/- the day after when he issued the requisite

certificate to Sh.Katuri Srinagesh.

7. Since both officers pleaded not guilty, an inquiry officer was appointed before whom the department examined four witnesses. ASI Ram Bilas PW-1 proved the record establishing petitioner being posted for duty at PS Chitranjan Park and ASI Anil Kumar at the General Branch South District; facts not in dispute. ASI Prem Pal Singh PW-2 deposed having issued the Local Police Certificate proforma to Sh.Katuri Srinagesh; a fact not in dispute. Insp.Joginder Kumar PW-3 deposed having required petitioner to conduct the local inquiry regarding passport verification of Sh.Katuri Srinagesh; a fact not in dispute.

8. Additional DCP/Vigilance S.R.Meena PW-4 deposed that posted as Addl.DCP/Vigilance he had received a print out of an e-mail from the Commissioner of Police sent by one Ms.Madhvi expressing anguish of being ashamed as a citizen of India and required to pay bribe in sum of ₹700/- for a police verification to a constable of PS Chitranjan Park as also a bribe in sum of ₹500/- to a police officer in the Office of the Deputy Commissioner of Police. As required by the Commissioner of Police, he conducted an inquiry, during which he recorded statements of Sh.Katuri Srinagesh and his wife Ms.Madhvi (the complainant) as also those of ASI Anil Kumar and the petitioner. Along with the statements he forwarded his report to the DCP Vigilance. He clarified that the statements of Sh.Katuri Srinagesh and his wife Ms.Madhvi were in their respective handwriting. During cross-examination, S.R.Meena was confronted by the petitioner with the contents of the e-mail to elicit the response that no names were mentioned in the complaint. With reference to the statement of Sh.Katuri Srinagesh wherein it was recorded: *The whole process was very professionally done and very*

quick, and I must sincerely appreciate his work and the manner in which the completed the whole process smoothly. Of course, I had to pay ₹700/- and which I paid of course with some unhappiness, when questioned as to how come Sh.Katuri Srinagesh on the one hand appreciated the petitioner and on the other hand alleged corruption; the twins not capable of being co-existent, S.R.Meena stated that it was only Sh.Katuri Srinagesh who could clarify as to what he had appreciated about the work of the petitioner against whom he had alleged money illegally being extracted from him.

9. Being of the opinion that the evidence recorded justified framing of a charge, the Inquiry Officer framed a charge, as required by the Delhi Police (Punishment & Appeal) Rules, 1980, which mirrors the summary of allegations and served the same upon the petitioner as also ASI Anil Kumar. The two were thereafter permitted to lead defence evidence.

10. Five witnesses were examined in defence as DW-1 to DW-5, out of which testimony of only DW-1 Sh.Mohan Lal Sharma needs to be noted by us for the reason the testimony of the other four pertains to the projected defence of ASI Anil Kumar. Sh.Mohan Lal Sharma deposed that on February 17, 2007 at around 2:00 PM petitioner came for police verification of Sh.Katuri Srinagesh at Gangotri Enclave, Alaknanda and he i.e. Mohan Lal Sharma was present as he resided in the house below. He had made a statement to the police officer that he knew Sh.Katuri Srinagesh for the last six months and that in his presence there was no monetary transaction.

11. The Inquiry Officer submitted a report indicting the petitioner, recording therein that during the inquiry neither Sh.Katuri Srinagesh nor his wife Ms.Madhvi appeared despite notices sent to them at Hyderabad and at Delhi, maintaining a stand that whatever they had wanted to state to the

police had already been stated by them in their written statements and that according to them there was no difference between a preliminary and a departmental inquiry.

12. Required to respond to the report of the Inquiry Officer, the petitioner faulted the same in so far it relied upon the statements of Sh.Katuri Srinagesh and his wife Ms.Madhvi recorded during preliminary inquiry. Petitioner highlighted that since the two did not appear at the departmental inquiry to affirm their alleged statements recorded during preliminary inquiry the same had to be ignored. The petitioner highlighted that the testimony of DW-1 had not been appreciated by the Inquiry Officer.

13. Brushing aside the objections to the report of the Inquiry Officer, the Disciplinary Authority levied penalty of permanent forfeiture of five years approved service upon the petitioner vide order dated January 06, 2009 against which statutory appeal filed was partially allowed by the Appellate Authority vide order dated August 12, 2009, who reduced the penalty to one year permanent forfeiture of approved service.

14. In the meanwhile, responding to an advertisement inviting applications to appoint Sub-Inspectors in Delhi Police, the petitioner applied and successfully cleared the examination conducted but found appointment eluding him when issuing a show cause notice on October 19, 2009, his candidature was cancelled vide order dated December 04, 2009; recording that past conduct of the petitioner evidenced from the penalty levied did not entitle him to be appointed as a Sub-Inspector (Executive).

15. Thus, the petitioner filed two Original Applications, one challenging the penalty levied and the other challenging the order cancelling his candidature to the post of Sub-Inspector (Executive).

16. Pertaining to the penalty levied, the contentions urged by the petitioner before the Tribunal were the same (two) which he had urged before the Disciplinary Authority with respect to the report of the Inquiry Officer, which we have noted in paragraph 12 above. Pertaining to the order cancelling his candidature to the post of Sub-Inspector (Executive) the petitioner urged that since he was competing at the direct recruitment level, the service record could not be considered. He cited one instance, in respect of which he claimed to be discriminated against: that of one Ct.Ajay Kumar who, in spite of being awarded major penalty of two years approved service being forfeited was appointed, upon selection, as a Sub-Inspector.

17. Vide impugned order dated April 25, 2011 both Original Applications have been dismissed by the Tribunal.

18. Pertaining to OA No.3102/2009 where under petitioner challenged the penalty levied upon him, the Tribunal has relied upon Rule 15(3) of Delhi Police (Punishment & Appeal) Rules, 1980 as also Rule 16(iii) thereof, which read as under:-

“15(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are not longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.”

x x x

16 (iii) *If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial.....*” **(Emphasis supplied)**

19. The Tribunal has opined that in view of the two Rules, since neither Sh.Katuri Srinagesh nor his wife Ms.Madhvi appeared before the Inquiry Officer, rather refused to do so, the Inquiry Officer was justified in bringing on record their written statements, recorded in their own handwriting as claimed by PW-4 to be brought on record. With respect to the grievance that testimony of DW-1 had been ignored by the Inquiry Officer, the Tribunal opined that it was settled law that a Court or a Tribunal could not re-appreciate evidence led at a domestic inquiry. On said twin reasoning the Original Application filed has been dismissed.

20. Pertaining to OA No.613/2010 where under petitioner challenged the order revoking his candidature to the post of Sub-Inspector (Executive), giving no reasons the Tribunal dismissed the same in the following words:-

“In this OA the applicant (HC Rajeev) has challenged the orders of the respondents dated 19.10.2009 and the show cause

notice, and also the order dated 4.12.2009 in terms of which his candidature for the post of SI (Exe.) Male in Delhi Police has been rejected on the ground that the penalty imposed on him is under challenge in OA No.3106/2009 and that as he is a departmental candidate his past record is of no relevance to appointment. The argument that as he is a departmental candidate his past record is of no relevance is rejected outright. Further, the OA challenging the penalty order imposed upon him now stands dismissed by the above order. Accordingly, this OA is also dismissed.”

21. The same contentions which were urged before the Disciplinary Authority pertaining to the report of the Inquiry Officer and were re-agitated before the Tribunal were pressed in aid before us while arguing W.P.(C) No.1960/2012 which challenges the order upholding the penalty levied upon the petitioner.

22. As we have noted above, three documents pertaining to the preliminary inquiry conducted were taken on record by the Inquiry Officer. The e-mail received by the Commissioner of Police from Ms.Madhvi which was forwarded to Additional DCP/Vigilance S.R.Meena, PW-4, and the statements (two) in handwriting, as claimed by PW-4, submitted to him by the complainant Ms.Madhvi and her husband Sh.Katuri Srinagesh. Further, as noted above, petitioner confronted PW-4 with respect to the contents of the e-mail; questioning him whether it was true that the same did not mention the name of any police officer. Further, the petitioner confronted PW-4 with respect to a part of the statement of Sh.Katuri Srinagesh, contents whereof we have extracted in paragraph 8 above.

23. It would be useful if we note the contents of the e-mail sent by Ms.Madhvi, wife of Sh.Katuri Srinagesh which triggered the inquiry. It

reads as under:-

*“The Police Commissioner
Delhi*

As a citizen of India, I am ashamed at the briber that exists in the Delhi PO itself.

As per your logo, “with you, for your, always.” sadly but this does not exist.

To get a Police verification Certificate we had to bribe ₹700/- at our local Police Station, Chittaranjan Park to the Head constable and then again ₹500/- the Deputy Commissioners office at the Hauz Khas on refusal of which we would have not got it in our hands.

We are thoroughly shocked and hate the very name of Delhi Police who are seen taking bribes outright. We also as citizens are scared of complaining because of the future treatment meted out to us but I hope you will look into this disgusting matter immediately and stick by what you say, “Citizens first”.

Thanking you

Madhvi”

24. It would also be useful to note the statements, which we find are handwritten, and as claimed by PW-4 were handed over to him by Ms.Madhvi and Sh.Katuri Srinagesh when they appeared before him during preliminary inquiry. Both of which bear the signatures of the respective maker of the statement. The statements are in different handwriting and from which we have proof that the scribe thereof were two different persons. PW-4 has not been confronted on his testimony that Ms.Madhvi and Sh.Katuri Srinagesh wrote the statements in their own hands. The two read

as under:-

“I, Katuri Srinagesh, resident of Pocekt B-27C, Gangotri Enclave, Alaknanda had applied for a PCC (Police Clearance Certificate).

I initially went to CR Park Police Station on 15/2/07 and was advised to go to Hauz Khas – DCP office to pick up the verification forms.

I then went to Hauz Khas the same day and was immediately given the forms and advised to go back to CR Park for the necessary verification process to start.

I then came back to CR Park and handed over the forms to the Reader to SHO, who advised that some officer would come for conducting necessary verification.

Since no one came on 15th or 16th/02/07, I once again went back on Saturday, 17/02/07 and requested for concerned verification officer please be sent ASAP. The Reader was very supportive and gave me the contact name and phone number of the Head Constable – Mr.Rajeev – Mobile – 9868463474 – whom I contacted Mr.Rajeev came immediately that very same evening, and conducted the investigation as well as took the verification process from the 2 witnesses in my locality.

The whole process was very professionally done and very quick, and I must sincerely appreciate his work and the manner in which he completed the whole process smoothly. Of course, I had to pay ₹700/- and which I paid of course with some unhappiness.

Mr.Rajeev also got the formalities completed of getting the requisite approval from the CR Park police station and handed over the verification papers to be handed over to Hauz Khas – DCP office.

I then went in Monday, 19/02/07 to HAG dept at Hauz Khas –

DCP office to submit the papers. The papers were accepted and was asked to come back on Wednesday, 21/02/07.

I once again went on 21/02/07 to the HAG office. But what really irritated and frustrated me was when I was once again asked ₹500/- to get my PCC. The papers were all ready in the file but then the way the gentleman said will cost me ₹500/- to issue the PCC, I had to with disgust hand over the ₹500/- to him and after which he then took out the papers, put the stamp, and then handed over the PCC.

I explained my frustration to my wife – K.V.Madhavi of the hassles to get a simple PCC, and out of her own frustration and anger took recourse to sending a mail to the concerned Police dept through email.

*K.SRINAGESH S/o Sri K.S.Rao
Pocket B-27C
Gangotri Enclave
Alaknanda
New Delhi 110019.”*

x x x

“I, Madhavi Katuri resident of B-27C, Gangotri Enclave, Alaknanda had gone to the Hauz Khas, DCP office on the 15th to pick up the form for PCC (Police Clearance Certificate) and consequently submitted on the 15th itself at our local police station C.R.Park for my Husband, Katuri Srinagesh as he required to said PCC for purposes required during his trip to Johannesburg, South Africa. The Head Police Constable, Mr.Rajeev had visited us on the 16th February 2007 and after checking and verifying about us from the neighbourhood took ₹700/- for processing and gave it back to us to be handed over to Hauz Khas DCP office for further process. My husband Mr.Srinagesh Katuri went to Hauz Khas, DCP office on the 19th February 2007 to submit the form and was asked to come on the 21st February to collect the same (PCC). When my

husband Mr.Srinagesh Katuri went on the 21st February 2007 to collect the PCC from the HAG, Hauz Khas DCP office, he was asked to give ₹500/- to get the PCC and thereupon ended giving ₹500/- to process the same.

We wanted to highlight this matter so that internally everything would be handed. We specifically would like to mention that the demand at Hauz Khas was more disgusting as we as citizen have a right to get PCC without a problem for any particular purpose required.

*Thanking your
Madhavi Katuri
W/o SRINAGESH KATURI”*

25. In the decision reported as (1977) 2 SCC 491 State of Haryana & Anr. Vs. Rattan Singh the Supreme Court had thrown light on the rules of evidence at a domestic inquiry. All materials which are logically probative for a prudent mind have evidentiary worth at a domestic inquiry and there is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

26. The petitioner does not dispute that he was posted as a Head Constable at PS Chitranjan Park within jurisdiction whereof was the apartment block, Gangotri Enclave, Alaknanda, New Delhi and that he was assigned the duty to visit the residence of Sh.Katuri Srinagesh at B-27C, Gangotri Enclave, Alaknanda to conduct spot verification and furnish a report required for purposes of passport concerning Sh.Katuri Srinagesh. Petitioner does not dispute having gone for the verification. But he claims not having demanded, much less having received bribe in sum of ₹700/-.

27. The petitioner relies upon the testimony of DW-1 as per whom he had vouched for the character of Sh.Katuri Srinagesh, having known him for six

months as a neighbour. Petitioner highlights that as per DW-1 no money was transacted in his presence. The petitioner argues that two most relevant facts have been overlooked by the Inquiry Officer. The first is the testimony of DW-1 as per which the police verification conducted by the petitioner was without a blemish. Secondly the statement of Sh.Katuri Srinagesh: *The whole process was very professionally done and very quick, and I must sincerely appreciate his work and the manner in which the completed the whole process smoothly. Of course, I had to pay ₹700/- and which I paid of course with some unhappiness.* The petitioner argues that if Sh.Katuri Srinagesh stated that everything was done very quickly and professionally and further he sincerely appreciated the manner in which the petitioner completed the whole process smoothly, it would be an irreconcilable statement that petitioner took ₹700/-.

28. However, learned counsel for the petitioner hastened to urge that the argument pertaining to the extract of the statement of Sh.Katuri Srinagesh should not be treated as a concession by the petitioner to the admissibility of Sh.Katuri Srinagesh's statement; counsel urged that the submission was in the alternative.

29. Pertaining to the report of the Inquiry Officer, we find a complete omission therein to consider the testimony of DW-1. We need to speak a word. Case after case, pertaining to disciplinary proceedings, reaching our Bench evidence that the Inquiry Officers are not discussing evidence favourable to the defence. The learned members of the Central Administrative Tribunal are simply brushing aside submissions based on said evidence, observing that the task of the Tribunal is not to re-appreciate evidence.

30. It is settled law that it is the duty of the Inquiry Officer to discuss the pros and the cons of the evidence, favourable and against, the delinquent. Adopting a line of logical reasoning, the report of the Inquiry Officer must reveal an appreciation thereof to determine as to on what side the weight of the evidence rests. If this exercise is performed by the Inquiry Officer, only then can it be argued that the Tribunal would not re-appreciate the reasoning. But where the Inquiry Officer simply records but overlooks while reasoning the evidence favourable to the delinquent, it would be the duty of the Tribunal to appreciate the weight of said evidence for the reason there is a distinction between re-appreciation of evidence and determining whether the Inquiry Officer has properly drawn his attention to all relevant evidence as a part of his mandate to submit a report after recording evidence. It is trite that principles of administrative law on the subject of judicial review over decisions which are administrative and/or quasi judicial in nature hold that a decision making process would be vitiated if material evidence is ignored. In said circumstance, either the matter should be remanded with a direction to take into account the relevant evidence and decide afresh or alternatively it is the duty of the Tribunal to factor in said relevant evidence to form an opinion.

31. With regret we note that as in the instant case, it is this Court which is repeatedly being called upon to conduct the exercise which should be performed by the Tribunal. The hasty and half baked decisions from the Tribunal cause a traffic jam in this Court.

32. We therefore take upon ourselves the burden to factor in the testimony of DW-4, but before that we express ourselves on the admissibility of the statements of Sh.Katuri Srinagesh and Ms.Madhvi.

33. We have noted Rules 15(3) and 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 which are embodying the principle of Section 32 of the Indian Evidence Act, 1872. The two provisions permit previous statements recorded during preliminary inquiry to be brought on record at the regular inquiry upon satisfaction recorded by the Inquiry Officer that said witnesses cannot be procured without undue delay or are no longer available.

34. We have perused the record of the inquiry. As recorded by the Inquiry Officer attempts made to secure presence of Sh.Katuri Srinagesh and Ms.Madhvi before the Inquiry Officer proved futile because either the two were not available or, when available responded that they had already given their written statements and when told that the same were during preliminary inquiry, responded by stating that they do not recognize a difference between a preliminary and a regular inquiry. The record of the Inquiry Officer would show that attempts were made to summon the two witnesses for October 29, 2007, November 01, 2007, November 27, 2007, February 12, 2008, February 19, 2008 and March 20, 2008. The order dated March 12, 2008 would record that the Inquiry Officer had received an e-mail from Sh.Katuri Srinagesh sent from Hyderabad recording therein that he had already deposed before Additional DCP/Vigilance Sh.S.R.Meena.

35. Thus, in view of Rules 15(3) and 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 the Inquiry Officer correctly brought on record the two statements recorded during preliminary inquiry conducted by Additional DCP/Vigilance Sh.S.R.Meena after taking the precaution of summoning the two witnesses repeatedly. We highlight that appearing as PW-4 Additional DCP/Vigilance Sh.S.R.Meena stated that when Sh.Katuri

Srinagesh and Sh.Madhvi appeared before him during preliminary inquiry the two handed over to him the statements penned by the two in their own hand.

36. Ignoring the two statements for the moment, we need to pose a question and answer the same with respect to the e-mail sent by Ms.Madhvi, admissibility whereof has not been questioned by the petitioner. Its contents have been reproduced by us in paragraph 23 above. As we have noted above the petitioner cross-examined PW-4 by drawing his attention to the fact that no police officer was named in the e-mail.

37. The argument of learned counsel for the petitioner that the e-mail is an innocuous document overlooks the fact that it implicates the police officer who went to the residence of Sh.Katuri Srinagesh to conduct verification to issue the police verification certificate and to whom, as per the e-mail, a bribe in sum of ₹700/- was paid. Now, it is not in dispute that it was the petitioner alone who went to the residence of Sh.Katuri Srinagesh to conduct the police verification.

38. Before we conclude any further on the summing up of the evidence which incriminates the petitioner, we note the evidence which may be of some help to the petitioner and has not been considered either by the Inquiry Officer or by the Tribunal. The same is the statement of DW-1, a neighbour of Sh.Katuri Srinagesh, who was present when petitioner came for police verification and who vouched for the good conduct of Sh.Katuri Srinagesh which statement was recorded by the petitioner to said effect, and that everything happened smoothly.

39. The testimony of DW-1 is cryptic. He does not say that he was sitting in the house of Sh.Katrui Srinagesh when the petitioner reached for police

verification. It may be true that he does not even say that after petitioner reached the house of Sh.Katuri Srinagesh for police verification he was called by Sh.Katuri Srinagesh, as a neighbour, to vouch for the good moral conduct of Sh.Katuri Srinagesh. It may well have happened that the petitioner had a dialogue with Sh.Katuri Srinagesh before the witness reached. It may be that the petitioner had a dialogue which Sh.Katuri Srinagesh after the witness left. We highlight that DW-1 has not said that the petitioner left before him.

40. Thus, the weight of the incriminating evidence is not counter balanced in any manner even if we take into account the testimony of DW-1.

41. On the weight of the incriminating evidence, we firstly have the fact that the petitioner went to the house of Sh.Katuri Srinagesh to conduct the police verification. We then have the e-mail sent by Sh.Katuri Srinagesh's wife Ms.Madhvi to the Commissioner of Police complaining of she being ashamed as a bribe giver, compelled to bribe ₹700/- to a police officer of PS Chitranjan Park and ₹500/- to an officer in the Office of Deputy Commissioner at Hauz Khas. We further have the statements of Sh.Katuri Srinagesh and his wife Ms.Madhvi directing implicating the petitioner. It may be true that in his statement Sh.Katuri Srinagesh talks of the verification process being smooth and professionally executed and for which he appreciated the work done, but regretted having paid bribe in sum of ₹700/- to the petitioner.

42. Why did Sh.Katuri Srinagesh speak in a seemingly contradictory language? Only he would know. But we have a ready explanation. Demands for bribe need not be crude and bitter. They can be gentle and sweet (sugar coated pills). Further, they can be in the nature of a demand

akin to a tip, *bakshish* as the word goes in the Northern part of India. A subtle hint underlines the demand. The hint being: *'Look here, I have taken the trouble to come to your house to execute a job of which you would be the beneficiary. I think goodness in you demands to reward me for helping you.'* The innuendo being that if you don't tip me: *'You may be in trouble because there is some unfinished work. I can delay submitting the report, and you would be troubled to make trips from your house to the office of the Deputy Commissioner of Police. So why not get over everything by tipping me.'* It could well be a demand which one comes across: *'Kuch chai pani ke liye to ho jaye'*. This could be a possible explanation for the seemingly irreconcilable statements of Sh.Katuri Srinagesh. We have used the word '*seemingly*' for the reason two statements would be irreconcilable if they cannot exist simultaneously i.e. one destroys the other. But where two statements can co-exist, the two would not be irreconcilable. As we have reasoned, the two statements of Sh.Katuri Srinagesh can peacefully co-exist and hence are not irreconcilable.

43. Factoring in the evidence favourable to the petitioner, we reach the same destination as was reached by the Inquiry Officer as also by the Tribunal i.e. that the weight of the evidence supports the verdict of guilt keeping in view the law declared by the Supreme Court in Rattan Singh's case (supra) for the evidence on its logically probative reasoning leads the prudent mind to the destination: '*Guilt*'.

44. That would be the terminus ad quem of the challenge to the verdict of guilt by the petitioner.

45. Pertaining to the challenge to cancelling petitioner's candidature to the post of Sub-Inspector (Executive), the reasoning of the Tribunal is in the

concluding paragraph of the impugned order dated April 25, 2011, contents whereof have been noted by us in paragraph 20 above.

46. Indeed, the reasoning is cryptic.

47. As we have noted above, the ground on which petitioner had challenged the order cancelling his candidature was that one Ct.Ajay Kumar on whom penalty of two years forfeiture of service had been inflicted on October 30, 2008, upon being selected as a Sub-Inspector in the year 2009 was appointed to said post. Pleading to said effect has been made by the petitioner in OA No.613/2010 in paragraph 4.9. The response to said paragraph is an admission inasmuch as the respondents have pleaded in the counter affidavit filed before the Tribunal that averment made in said paragraph of the Original Application was a matter of record.

48. Now, it was the duty of the Tribunal to have pose the relevant questions which arose for consideration on the plea of parity and de-hors the same and after giving reasons to have answered the questions.

49. De-hors the plea of parity, the question which the Tribunal ought to have posed would be: In a matter of public employment by way of direct recruitment to a public post, if the candidate is already holding a public post and has been indicted at a domestic inquiry, whether the nature of indictment has a bearing on the character of the candidate? Further question would be: Whether the nature of indictment reflecting upon the character is of a kind which should result in denial of public employment to a higher post? On the plea of parity, depending upon the answer to the first two questions, the possible question could be whether petitioner was entitled to the parity claimed for?

50. Since the Tribunal has not settled the questions which arose for its

consideration in OA No.613/2010, we are of the opinion that after setting aside the impugned order in so far it dismisses OA No.613/2010 we need to restore said Original Application for re-determination.

51. Thus, we conclude by dismissing W.P.(C) No. 1960/2012, pleadings whereof would show that it challenges the impugned order dated April 25, 2011 in so far OA No.3102/2009 has been dismissed. We affirm the impugned order relatable to OA No.3102/2009.

52. We dispose of W.P(C) No.1959/2012, pleadings whereof would show that it challenges the impugned order dated April 25, 2011, in so far OA No.613/2010 has been dismissed, by setting aside the impugned order dated April 25, 2011 relatable to OA No.613/2010. We restore said Original Application for re-adjudication by the Tribunal with a direction that the questions we have settled in paragraph 48 be answered, and should any other question of law arise for consideration the same would also be answered.

53. Parties shall appear before the Registrar of the Tribunal on November 11, 2013 who shall list OA No.613/2010 before the appropriate Bench for re-adjudication.

54. Parties shall bear their own costs in the two writ petitions.

55. DASTI.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

OCTOBER 11, 2013

mamta