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

\# **CNR No. DLHC010494302026**

\+ W.P.(C) 15175/2026, CM APPL. 71267/2026, CM APPL. 71268/2026, CM APPL. 71269/2026

COMMISSIONER OF POLICE, DELHI AND ORS.
.....Petitioners

Through: Mr. Kshitij Chhabra, SPC with Mr. Dev Pratap Shahi GP and ASI Devinder & SI Dharampal

versus

UMESH KUMAR .....Respondent

Through: Mr. Sachin Chauhan and Ms. Ridhi Dua, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MS. JUSTICE NIVEDITA ANIL SHARMA

JUDGMENT (ORAL)

% 28.10.2026

C. HARI SHANKAR, J.

1. The respondent, who was a Head Constable in the Delhi Police, was subjected to departmental proceedings following a charge sheet dated 01 July, 2021, along with ASI (Exe.) Manoj Kumar.

2. The charge against the respondent, as contained in the charge sheet, read thus:

> "On 30.12.2020 an information vide DD No. 34A was received at PS Alipur that two Constables of Delhi Police who were deployed at Singhu border have been taken away by two Sikh persons towards Haryana side. The same was entrusted to SI Sachin of PS Alipur who reached the spot and HC Umesh No 1152/T was

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handed over to him by Haryana Police. On enquiry it was revealed that ASI Manoj, No. 1134/T (PIS No. 28881095) and HC Umesh No.1152/T (PIS No. 28892564) had gone towards Haryana side after crossing the border to consume alcohol. Some argument took place between farmer agitators and them across the border (Haryana Side).

Sensing the graveness of situation ASI Manoj Kumar 1134/T fled from the spot when unknown protestor beat up HC Umesh Kumar 1134/T HC Umesh was got medically examined vide MLC No.9853/2020 at BSA Hospital Rohini. ASI Manoj No. 1134/T who was posted at Traffic Lines, Todapur and HC Umesh no 1152/T who was posted at Kotwali traffic circle had reported for arrangement duty in traffic circle Narela with regard to Farmers Agitation at Singhu Border vide DD No. 28 dated 29.12.2020 traffic circle Narela and DD No. 37 of Kotwali circle. At 11.00 AM SI Omender, 1256/D of Narela Circle checked them and both of them were found absent from their duty point Singhu cut and were marked absent vide DD No.12 dated 30.12.2020. The Addl. DCP-1 Rohini District Sh. Jitender Meena told that after taking alcohol they tried to climb on the stage of Agitators and started talking nonsense which could have disturbed the peace. Protestors got agitated and started beating them. They were, rescued by Haryana Police. As per medical report of HC Umesh, the BAC is 36mg/100ml means he consumed alcohol.

Further ASI Manoj has been escaping since then and his medical could not be conducted. ASI Manoj was tried to be contacted over phone by SI Anandpal No. 5798/T of Narela circle, his daughter picked up the phone and informed that her father has gone to hospital. Thereafter, he was again contacted when his phone was found switched off. Later on, SI Omender No. 1256/T of Narela circle went to his official residence in Shalimar Bagh where it was learnt that he had vacated the quarter two months back and neighbors do not know about his present address. As per the order of senior officers, both of them have been suspended vide DD No.21 dated 30.12.2020 Todapur Traffic Lines. Further statement of HC Umesh was recorded wherein he admitted that he along with ASI Manoj crossed the border and consumed liquor from shop in Haryana. There a scuffle took place between them and some Sikh persons who beat them up badly.

The above act on the part of ASI Manoj, No. 1134/T (PIS No. 28881095) and HC Umesh No.1152/T (PIS No.28892564) amounts to gross misconduct, negligence and lack of sincerity and dedication in discharge of official duties and unbecoming of a police official which renders them liable for departmental action under the provision of Delhi police (Punishment and Appeal)

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Rules- 1980."

3. In his defence to the aforesaid charge sheet, the respondent did not dispute the fact that he was found to have consumed liquor. There was an MLC[1] report, as well, which confirmed the fact that he had consumed liquor. The case set up by the respondent, in his written defence to the charge sheet, was that he and ASI Manoj Kumar had crossed the Singhu Border into Haryana to have tea, as there was no tea stall on the Delhi side of the border and that certain miscreants had accosted the respondent and taken into their premises, where they forced alcohol down through his throat. The respondent also agreed to submit himself to a medical examination to confirm the fact that a scuffle had taken place.

4. Admittedly, no such stand was adopted by Manoj Kumar, who completely denied the allegation of having crossed the border with the respondent.

5. In the disciplinary proceedings which were jointly conducted against the respondent and Manoj Kumar, the Inquiry Officer held the charges against both of them to stand proved and concluded as under:

> "After going through the statements of PWs, DWs, replies/Defence statements of the delinquents ASI Manoj Kumar No.1134/T and HC Umesh No.1152/T, relevant documents/records available on DE file and discussion made above, I have come to a conclusion that the Charges against delinquents ASI Manoj Kumar No.1134/T and HC Umesh No.1152/T that on 30/12/2020, while deployed for duty at Singhu Border cut in connection with Farmers' agitation they got themselves unauthorizedly absent from duty point, went to a wine shop in the area of Haryana after crossing borders, consumed liquor and also had a scuffle with some farmers have

[1] Medico Legal Case

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been proved during the Departmental Enquiry proceedings."

6. Following the findings in the enquiry report, the respondent and Manoj Kumar were dismissed from service.

7. The respondent, as well as Manoj Kumar, approached the Central Administrative Tribunal challenging the decision to dismiss them from service *vide* OA 3194/2022 and OA 84/2023.

8. The present challenge, at the instance of the Delhi Police, is to the judgment dated 12 May, 2026 rendered by the Tribunal in OA 84/2023.

9. Both the OAs, i.e. filed by Manoj Kumar and the respondent, were allowed by the Tribunal.

10. The Delhi Police filed WP (C) 10175/2024, challenging the judgment dated 8 March 2024 passed by the Tribunal in OA 3194/2022 filed by Manoj Kumar. *Vide* judgment dated 31 January 2025, the writ petition was dismissed.

11. On the last date of hearing, Mr. Sachin Chauhan, learned Counsel for the respondent, had sought to submit that, inasmuch as the respondent and Manoj Kumar had jointly been subjected to departmental proceedings and exonerated, and as the exoneration of Manoj Kumar had been upheld by the Tribunal as well as by this court, no different fate could visit his client.

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12. When this aspect was put to Mr. Kshitij Chhabra, learned SPC appearing for Delhi Police, he placed reliance on a hand written statement of the respondent dated 30th December 2020, purportedly confessing to the allegations against him.

13. We, therefore, called upon Mr. Kshitij Chhabra to advance submissions as to whether the said statement could have been relied upon, when it was not proved in evidence, in view of the judgment of the Supreme Court in ***Roop Singh Negi v. Punjab National Bank***[2]**.**

14. Today, Mr. Kshitij Chhabra submits that the decision in ***Roop Singh Negi*** is distinguishable, as there was no other evidence against the appellant Roop Singh Negi in that case, save and except his confessional statement.

15. We are only in agreement with Mr. Kshitij Chhabra, qua this submission, in part. Paras 14, 15 and 16 of the decision in ***Roop Singh Negi*** read thus:

> "14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. *The charges levelled against the delinquent officer must be found to have been proved*. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. *The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents.* The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.
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> 15. We have noticed hereinbefore that *the only basic evidence*

[2] **(2009) 2 SCC 570**

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whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

16. In ***Union of India v. H.C. Goel***[3] it was held:

> "22. … The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.
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> 23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea,

[3] AIR 1964 SC 364

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> the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

16. The decision in ***Roop Singh Negi,*** therefore, makes it clear that the petitioner cannot seek to rely on the allegedly confessional hand-written statement of the respondent as it had not been proved in evidence or even put to the respondent at any point of time.

17. We, therefore, are not able to accept Mr. Kshitij Chhabra's submission that the existence of the hand-written statement of the respondent can constitute a basis to distinguish the present case from the case of ASI Manoj Kumar.

18. Matters, however, do not rest there.

19. As we have already noticed, there were other vital differences between the case of the respondent and that of Manoj Kumar. Manoj Kumar had flatly refused having crossed the border or having consumed any alcohol, whereas the respondent admitted the fact that he had crossed the border and consumed alcohol.

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20. The respondent's defence was, however, that the consumption of alcohol by him was involuntary, as alcohol had been forced down his throat by certain persons who had waylaid him after he had crossed the border to have tea, and taken him to their premises.

21. The Tribunal has, in the impugned judgment, noted this difference in paragraph 13, which reads thus:

> "13. The applicant in his reply to the summary of allegations (Annexure A-6) has denied the allegations and he has submitted that when he was performing his duties on 29/30.12.2020 he had gone to take tea with ASI Manoj Kumar at a nearby vendor as there was no tea vendor nearby on Delhi side. When he had taken tea, the applicant was stopped on the way by some Nihang Sardars and said that the applicant was doing surveillance on their activities. They called other Nihang Sardars and started beating the applicant mercilessly. They also took the applicant on first floor of some building nearby and then poured the alcohol in the mouth of the applicant forcefully and also started creating nuisance. Admittedly the applicant was medically examined and the Doctor in its report (Annexure A-11) has reported physical assault. However, such defence of the applicant has not been considered and/or appreciated even remotely by the Inquiry Officer. Admittedly, the impugned disciplinary and appellate orders are based on the findings of the Inquiry Officer about the applicant's alleged admission on 30.12.2020 before the ACP/T/Outer Delhi who has not proved the said statement by being produced as a prosecution witness. With regard to the evidence of PW-9, i.e. SI Sachin, the Tribunal's judgment in the case of ASI Manoj Kumar and read with the order/judgment of the Hon'ble High Court dated 31.01.2025 in the aforesaid Writ Petition speaks in volume."

22. Thus, the Tribunal has observed that the defense of the respondent was that he had crossed the Singhu Border to have tea, that he had been taken away by certain Nihang Sardar, beaten up mercilessly, transported to the first floor of a building and that alcohol had been forced down his throat. The fact that he had consumed

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alcohol is also proved by his MLC.

23. However, having noted these facts, the Tribunal has allowed the respondent's OA merely following the judgment in ***Manoj Kumar***.

24. We are of the view that the Tribunal could not have followed the decision in ***Manoj Kumar*** without rendering a finding regarding the effect of the differentiating features between the case of the respondent and Manoj Kumar, especially as Manoj Kumar had denied having crossed the border, for which there was no evidence available, whereas the respondent had acknowledged having crossed the border, albeit to have tea and sought to explain the fact that he was found to have consumed alcohol by certain Nihang Sardars had taken him forcibly to their premises and forced alcohol down his throat.

25. As the Tribunal has noted these differentiating features but has not rendered any finding therein and has merely followed its earlier judgment in ***Manoj Kumar,*** the impugned judgment cannot sustain.

26. It is accordingly quashed and set aside.

27. We remit OA 84/2023 to the Tribunal for consideration afresh, specifically with respect to the defence which had been taken by the respondent before the IO and before the Tribunal, explaining the fact that he was found on the other side of the border having consumed alcohol.

28. We, however, make it clear that we have not expressed any

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opinion on whether the said defence should, or should not, be accepted. The Tribunal would be within its liberty to take a view in that regard after hearing learned Counsel for the parties.

29. We, however, reiterate our finding that the confessional statement said to have been provided by the respondent on a hand-written sheet cannot be relied upon against him in view of the judgment of the Supreme Court in ***Roop Singh Negi***.

30. The Tribunal would be, therefore, required to return a finding on the sustainability or otherwise of the defence advanced by the respondent, especially in view of the fact that he had been found on the other side of the border with liquor in him.

31. We make it clear, once again, that the Tribunal would be at liberty to take a call on the above aspect one way or other. We should not be treated as having expressed any opinion on the merits of the respondent's defence. In other words, it would be open to the Tribunal to either maintain or modify its earlier decision or arrive at any other conclusion, as it would deem appropriate.

32. Needless to say, both sides would be heard before any decision is taken.

33. To expedite matters, we direct learned Counsel for the parties to appear before the Tribunal on 16 November 2026.

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34. Neither side would be entitled to seek any adjournment on the said date.

35. We also request the Tribunal to hear the parties on the said date as it involves a dismissal, and to pass orders thereon after hearing the parties as expeditiously as possible thereafter.

36. This writ petition is disposed of in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J.

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OCTOBER 28, 2026/*dsn*

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