

per the allegations, at about 10:30 p.m. on 29.12.1995 an intimation was also received at PS Chanakyapuri that two police personnel were teasing public on Vinay Marg and had snatched away the wrist watch from an employee of Ashoka Hotel. On receiving this complaint, ASI Bankey Bihari posted at PS Chanakyapuri was directed to inquiry into the matter. He reached Ashoka Hotel and recorded the statement of Sanjay who reported the aforesaid incident. On this basis, FIR No. 330/1996 was registered against the respondent herein under Sections 392/34/506/186/313 IPC.

2. The Commissioner of Police, thereafter, passed orders dated 7.1.1997 dismissing the respondent herein invoking the provisions of Article 311 (2) (b) of the Constitution and dispensing with the inquiry. These orders were challenged by the respondent by filing OA No. 1245/1997 which was allowed directing reinstatement of the respondent herein. The Tribunal held that it was not a case where the inquiry should have been dispensed with and action, if any, could be taken only after holding an appropriate departmental inquiry.
3. Complying with the aforesaid orders and reinstating the respondent in service, the respondent was served with the charge-sheet and an Enquiry Officer was also appointed. In this charge-sheet following charges were framed against the respondent herein.

“ I Inspr, Harbans Singh No. D-I/453 II Bn. DAP charge you HC Satbir Singh No. 1081/DAP and Const. Jitender Kumar n. 1734/DAP that on the night intervening 20/30-12-96 you HC Satbir Singh No. 1081/DAP while posted in Special Task Force, Chanakya Puri, New Delhi. You were deployed for patrolling duty in Beat No. 3 Embassy Area from 8.00 PM to 8.00 AM . You, HC Satbir Singh No. 1081/DAP were armed with pistol and wireless set and Const. Jitender was armed with rifle. While both of you were on patrolling duty in the area at about 10.30 AM an information was received at PS Chanakya Puri that two police personnel are teasing public on Vinay Marg and had snatched money and a wrist watch from a person of Ashoka Hotel. ASI Banke Bihari of P.S. Chanakya Puri was detailed to enquire into the matter, who reached at Ashoka Hotel where one Sanjay Kumar S/o Sh. Vijay Prakash R/o 25/342, D.M.S. Colony, Hari Nagar, Ghanta Ghar, New Delhi was found who report that at about 10.14 PM while he was waiting for a Bus at Vinay Marg Bus Stand opposite Ashoka Hotel after his duty, two policemen on Scooter No. DL-6SA-1131, Bajaj Chetak come there. One was holding a gun and another a W.T. Set. Policeman holding the gun, manhandled him, broke button of his shirt and removed his wrist watch H.M.T. Kohinoor and another holding W. Set removed Rs. 190/- from his purse. After this both policemen started Scooter and went away threatening that if he went to Ashoka Hotel they would shoot him. Mr. Sanjay also reported that both policemen were under the influence of alcohol. He came back to Ashoka Hotel and informed Security Officer and Asstt. Manager House Keeping accordingly.

SHO/PS Chanakya Puri and ASI Banke Bihari went to S.T.F. office and on enquiry, it was revealed that Scooter NO. DL-6SA-1131 was of Const. Jitender Kumar, who along with you HC Satbir Singh, No. 1081/DAP was on patrolling duty from 8.00 PM to 8.00 AM checking officer of Special Task Force, ASI Laxmi Narain was

summoned in S.T.F. Office and all the staff on patrolling duty in that night was asked to assemble at Afghan Embassy, AT Afghan Embassy, the complainant (Sh. Sanjay Kumar) identified HC Satbir Singh No. 1081/DAP and Const. Jitender Kumar NO. 1734/DAP to be the same police personnel, who had robbed him. Both of you were brought to PS Chanakya Puri and Rs. 190/- snatched from the complainant were recovered from HC Satbir Singh and the Wrist watch was recovered from Const. Jitender Kumar, Rifle of Const. Jitender Kumar was also seized. There you HC Satbir Singh No. 1081/DAP started manholding the I.O. and threatened the duty officer staff by pointing the pistol you also cocked the pistol and took away Const. Jitender Kumar threatening the staff of the police station. The Scooter, wireless Set, Rifle, Rs.190/- and wristwatch had been already recovered from them whereas pistol was recovered lateron. The pistol was a surrendered by HC Satbir Singh to Const. Pawan Kumar No.1359/DAP, who brought it to P.S. Chanakyapuri. On the complaint of Sh. Sanjay Kumar a case FIR No. 330 dated 30.12.96 u/s 392/34/505/186/353 IPC has been registered at PS Chanakya Puri, New Delhi against you, HC Satbir Singh No. 1081/DAP and Const, Jitender Kumar NO. 1734/DAP. An absence report was also record vide DD No.30 dated 29/30.12.96, S.T.F. Chanakya Puri.

The above act on your part amounts to gross misconduct, indiscipline and unbecoming of police official which renders you liable to be punished under the provisions of Delhi Police (Punishment and Appeal) Rules 1980.”

4. The Enquiry Officer initially initiated the enquiry proceedings. In the meantime, however, in the FIR No. 330/1996 registered against the respondent, learned Additional Session Judge, New Delhi convicted the respondent vide judgment dated 1.6.2001 under Sections 186/353/224 of the Indian Penal Code. The respondent herein

preferred a Criminal Appeal No. 444/2001 against the aforesaid judgment. This appeal was admitted on 18.6.2001.

5. The departmental inquiry was kept in abeyance till the disposal of the aforesaid criminal appeal and in this behalf, orders dated 12.12.2004 were passed. However thereafter, Disciplinary Authority decided to continue with the inquiry and passed final order dated 09.10.2003 removing the respondent from service. The respondent preferred departmental appeal there against, which was also rejected by the appellate authority. Challenging orders of the Disciplinary Authority as well as Appellate Authority, the respondent approached the Tribunal and filed OA No. 716/2004. This OA has been allowed by the learned Tribunal and penalty orders quashed.
6. In the present writ petition filed by the petitioner, orders dated 16.11.2004 passed by the Tribunal allowed the OA of the respondent is assailed. Perusal of the judgment of the Tribunal would demonstrate that the Tribunal rejected various contentions raised by the respondent. However, one submission of the respondent herein found favour with the Tribunal, viz., the Inquiry Officer had not recorded any findings as to which part of charge was proved and he had simply recorded that the charge stood proved. The Tribunal in this behalf observed as under:

“18. The present question has necessarily to be examined in the light of the findings recorded by the Joint Commissioner of Police

while dismissing the appeal. In one breath it has been stated that charge stood proved but still it has been recorded that if the applicant is acquitted by the High Court, he can represent and disciplinary authority will take action under Rule 11 (2) of Delhi Police (Punishment & Appeal) Rules. As one reads the order of the enquiry officer, it is obvious that under the caption "discussion of evidence", some evidence has been reproduced. There is no conclusion as to which part of statement is being believed and how the witnesses are reliable.

19. At this stage, we hasten to add that we are not expressing on the merits of the matter and also the gravity of the offence but when the enquiry officer is to submit the report, necessarily he must discuss the evidence and record as to if he is believing the witnesses and how much of the statement has to be believed in a disciplinary enquiry. After recording of the evidence, he has concluded that the charge has been proved. This has been acted upon by the disciplinary authority. Necessarily reasons recorded means reasons recorded whether a witness is to be believed or disbelieved. That unfortunately has not been done and even the appellate authority records that with respect to part of the offence for which the criminal appeal is pending in the Delhi High Court, necessary action can be taken. It gives the impression as if the charge pertaining to duty which culminated also into offence punishable under Section 353/186/506 was the only one concerning the applicant. Therefore, the impugned orders cannot be sustained."

6. In view of the above, the only direction which is given is that the Inquiry Officer may pass a fresh reasoned order in accordance with the law. This is wholly justified course of action taken by the Tribunal in the aforesaid circumstances and we do not see any reason to interfere with the same.

7. We accordingly dismiss this writ petition.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

January 14, 2009.
sv/pmc