

**IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE COURTS, DELHI.**

CNR No. DLCT11-0000242-2023

CBI No. 44/2023

RC-DAI-2022-A-0065

PS : CBI/ACB/ND

**U/s 120B IPC read with 7 of Prevention of Corruption
Act 1988**

Central Bureau of Investigation (CBI)

1. Ramkishan Mehta

S/o late Dharampal

the then Head Constable Delhi Police

P.S Saket

R/o Bhoopkhera Post-Budhwal, Tehsil

Behror, District- Alwar, Rajasthan

(A-1)

2.Karampal

S/o Dayanand

Public Servant

R/o- VPO- Kajlan, Tehsil- Buhana

District Jhunjhunu Rajasthan

(A-2)

ORDER ON CHARGE

1. Vide this order, I shall decide the question of charge to be framed against the accused persons namely **Ramkishan Mehta (A-1) and Karampal (A-2)** as well as the two separate applications moved on their behalf **under Section 19 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act')** seeking **discharge/dropping of proceedings on account of invalid and illegal sanction for prosecution.**

2. The brief facts as per the charge-sheet filed and necessary for deciding the issue of framing of charge as well as applications seeking discharge of A-1 and A-2 are that one complaint dated

11.11.2022 was lodged by complainant Sh. Pawan Kumar, resident of H. No. M-72, Lado Sarai, New Delhi against Ramkishan Mehta (A-1), Head Constable/Beat Officer, Lado Sarai, PS Saket, New Delhi. It was alleged that a sum of Rs.15000/- towards one time payment and Rs.6000/- as monthly was being demanded by said Ramkishan Mehta (A-1) for not removing his food Wheel Cart (*Thela/Rehri*) from Firni Road, Lado Sarai, New Delhi. He alleged that the said demand was being made for the last one week of the lodging of the complaint with CBI. As the complainant did not intend to pay any bribe to Ramkishan Mehta (A-1), he lodged the present complaint.

2.1 Since the complainant told that the suspect officer (A-1) was not likely to converse regarding bribe amount over telephonic call, it was decided that verification team comprising of Inspector Jaswinder Singh, independent witness namely Vikram Dutt Bhardwaj alongwith complainant will visit Police Chowki/Booth. One new Digital Voice Recorder (DVR), a new sealed 16 G.B micro SD card, CBI brass seal alongwith sealing material was arranged and the verification team left for spot. The DVR was kept/hid in switched on mode in the clothes of the complainant who proceeded towards police chowki/booth. After sometime the complainant returned back to the CBI team and he was asked to narrate the sequence of events. The complainant then narrated that HC Ramkishan Mehta (A-1) was sitting in the police booth with another person. A-1 discussed his demand with complainant and also sought information as to what amount he (the complainant) was paying to the MCD, Committee etc. Thereafter, A-1 demanded Rs.5000/- as previous balance and Rs.3000/- as monthly. The complainant assured A-1 that he

would pay the amount on the next day i.e 12.11.2022. The recorded conversation in the memory card was heard through DVR which confirmed the version of complainant. Accordingly, Inspector Jaswinder Singh submitted verification report dated 12.11.2022. Thus, on the basis of aforesaid verification report, the present case vide RC-DAI-2022-A-0065 was registered on 13.11.2022 against A-1 under Section 7 of PC Act 1988. The investigation of the said case was assigned to Inspector C.M.S Negi.

2.2 After the completion of pre-trap proceedings, on 13.11.2022 Inspector C.M.S Negi (TLO) alongwith raiding team comprising of independent witnesses reached near Police Booth Lado Sarai, PS Saket, Delhi. The team members took their position and complainant went inside the booth where he was seen talking to police personnel. After a few minutes, complainant gave pre-decided signal. The raiding team went inside police booth where Constable Mahesh Kumar Yadav was lying on a cot, while HC Karampal (A-2) was also found sitting there alongwith A-1. The tainted bribe amount was found under the mattress on the right side of the cot where Karampal (A-2) was found sitting. They were apprehended and tainted amount was recovered. The recovered tainted amount was counted and found to be Rs. 5000/- (10 GC notes of Rs.500). It was tallied by both independent witnesses with net amount mentioned in pre-trap memo which matched *in toto*. The washes of incriminating material were taken and sealed.

2.3 The further investigation revealed that the recorded conversation and narration of the complainant established that A-2 was also involved in demand and acceptance of bribe. It

was also disclosed that A-1 and A-2 were staying in the barrack of PS Saket. Since the booth was not found to be conducive for further proceedings, accused persons were taken to CBI office where other proceedings related to the case were done. The recovered tainted bribe amount was sealed in an envelope. Accused persons were interrogated and arrested at 22.50 and 22.55 hrs respectively on 13.11.2022 through separate arrest-cum-personal search memo. Post trap memo was prepared by TLO. Three voice identification-cum-transcription memos were prepared. The complainant had identified the voice of Ramkishan Mehta (A-1) and Karampal (A-2) and third police official Mahesh Kumar Yadav. Inspector Subodh Kumar (LW-7) and Constable Mahesh Kumar Yadav (LW-6) (both posted at P.S Saket) also identified the voice of Ramkishan Mehta (A-1) and Karampal (A-2).

2.4 During the further investigation, Mahesh Kumar Yadav, the third police official who was inside the booth during transaction was also examined. He has been named as prosecution witness. The sanction for prosecution under Section 19 of the PC Act in respect of Ramkishan Mehta (A-1) and Karampal (A-2) both Head Constables PS Saket Delhi was obtained from the Competent Authority i.e Deputy Commissioner of Police, District South. Having completed the investigation, both the accused persons have been chargesheeted.

3. In the application under Section 19 of the PC Act moved on behalf of Ramkishan Mehta (A-1) is seeking discharge dropping of proceedings against A-1 for want of valid prosecution sanction. It is pleaded that A-1 was recruited/appointed as

Constable in Delhi Police by Deputy Commissioner of Police vide order dated 07.04.2009. Later on, A-1 was promoted and appointed as Head Constable vide promotion dated order 02.06.2022 passed by Commissioner of Police, Delhi. The said order dated 02.06.2022 is annexed with the application. Therefore the sanction accorded for prosecution by D.C.P. Ms. Chandan Chowdhary (LW-12) is invalid and illegal.

4. Similarly in the application under Section 19 of PC Act seeking discharge/dropping of proceedings against HC Karampal (A-2) for want of valid prosecution sanction, it is submitted that applicant/A-2 was appointed as Head Constable after completing the lower school course as Head Constable vide notification/ order no. 23129 dated 14.12.2021 of Commissioner of Police. The name of applicant/A-2 is mentioned at serial no.280. The prosecution has filed the final report under Section 173(2) Cr.P.C after obtaining sanction for prosecution on 23.12.2022 from Deputy Commissioner of Police, South District, New Delhi .

4.1 It is further pleaded on behalf of both accused that sanction order dated 23.02.2022 as required under Section 19 (1) (c) of PC Act issued by Ms. Chandan Chowdhary (LW-12) Deputy Commissioner of Police, South District is invalid and illegal sanction and contrary to the provisions of the statute , as they were appointed as Head Constable by the Commissioner of Police .The valid prosecution sanction could only be accorded by the competent authority who had appointed the applicant/A-1 and applicant/A-2 as Head Constable, which is not the case herein.

5. Hence, prayer is made to discharge or dropping of proceedings against the accused persons/applicants herein on account of invalid sanction for prosecution.

6. In the separate reply filed by the CBI, it is pleaded that the present case was registered against A-1 on the basis of written complaint dated 11.11.2022 by Pawan Kumar Gupta with the allegations that A-1 was demanding a sum of Rs.5000/- upfront payment and monthly of Rs.3000/- for not removing his Wheel Cart (*Thela/Rehri*). Subsequent to the registration of the FIR, Ramkishan Mehta (A-1) and Karampal (A-2) both Head Constable, Delhi Police were caught while demanding and accepting bribe and accordingly arrested.

6.1 It is further submitted that in terms of Section 19 of PC Act, Ms. Chandan Chowdhary (LW-12), Dy. Commissioner of Police (DCP), South District, New Delhi vide letter No. 14565/HAP/SD(P-IV) dated 23.12.2022 has granted the sanction for prosecution both against Ramkishan Mehta (A-1) and Karampal (A-2). The DCP Ms. Chandan Chowdhary (LW-12) is the competent authority to remove the said accused persons from service as per Delhi Police Act,1978 as well as Delhi Police (Appointment and Recruitment Rule) 1980.

6.2 It is further submitted that the matter of appointment and punishment for the police officials upto the rank of Inspector are dealt with under Section 12 of the Delhi Police Act 1978. Further, it is submitted that Rule 6 of the Delhi Police (Punishment & Appeal) Rules 1980 makes it very clear that the DCP is the competent authority to remove the officials upto the rank of S.I and thus, D.C.P South District is the competent

authority to accord sanction for prosecution under Section 19 of the PC Act against both the accused persons.

6.3 Further, it is pleaded that Delhi Police Act ,1978 is passed by the Parliament of India and any executive order including the order of the Commissioner of Police issued by the notification No. 14049-14128/Promotion Cell (Desk-IV)/P.Br./PHQ dated 02.06.2022 or notification No. XIII/12(21)2021 23130-269/CB-II (Desk-IV) PHQ, dated Delhi 14.12.2021 cannot prevail over the provisions contained in Section 12 of the Delhi Police Act 1978 or Rule-6 of Delhi Police (Punishment & Appeal) Rules 1980. Reliance is also placed upon judgments of Hon'ble Supreme Court in the following cases :

- (i) Ramakant Shripad Sinai Advapalkar V. Union of India (UOI) & Ors., AIR 1991 SC 1145,**
- (ii) State of Maharashtra V. Mahesh G.Jain, 2013 Cr.L.J 3092,**
- (iii) Dr. Subramanian Swamy V. Dr. Manmohan Singh 2012 (1) SCC 1041**
- (iv) Store of M.P V. Virendra Kumar Tripathi 2009 (15) SCC 533**
- (v) State V. T. Venkatesh Murthy 2004 (4) RCR (Criminal) 388**
- (vi) Prakash Singh Badal V. State of Punjab 2007 (1) RCR (CrI) 1**
- vii) CBI V. Pramila Virendra Kumar Agarwal & Anr AIR Online 2019 SC 1131**
- viii) Dinesh Kr. V. Chairman, Airport Authority of India (2012) 1 SCC 532**

7. In support of his application, it has been argued by Ld. Counsel for Ramkishan Mehta (A-1) that it is not disputed that

A-1 was promoted to the rank of Head Constable vide order dated 02.06.2022 which is the order passed by Commissioner of Police, Delhi. As far as the rank of Ramkishan Mehta (A-1) being that of Head Constable is concerned, there is no dispute. Even the sanction order dated 23.02.2022 (D-19) issued by Ms. Chandan Chowdhary also states that that she has granted sanction for prosecution against the accused (A-1) who was posted as Head Constable at Police Station Saket.

8. Similar arguments have been advanced on behalf of Karampal (A-2) who too argued that A-2 was firstly promoted on *ad hoc basis* and was subsequently promoted as Head Constable on regular basis vide order No. 23129 dated 14th December 2021 of Commissioner of Police, Delhi. The name of the applicant/A-2 finds mention at serial no. 280. The said order of promotion and A-2 working as Head Constable at Police Station Saket at relevant point of time is not disputed by the prosecution. Therefore, as both the accused persons were promoted to the rank of Head Constable by the order of Commissioner of Police and accordingly the sanction accorded by Ms. Chandan Chowdhary, Deputy Commissioner of Police is invalid being given by the officer below to the rank of Appointing Authority.

8.1 In support of their averments/pleas, Ld. Counsel's for the accused persons/applicants have also relied upon the following judgments:

- (I) **Davinder Singh V. State ILR 1974 Delhi 400**
- (II) **Krishna Kumar V. Divisional Assistant Electrical Engineer & Ors. (1979) 4 SCC 289.**

- (III) **State Inspector of Police Visakhapatnam V. Surya Sankaram Karri, 2006 (4) RCR (Criminal) 53 SC.**
- (IV) **Ashok Rangshahi V. State of MP 1996 (2) Crimes 39**
- (V) **Omkar Chand Parashar V. The State 1994 (3) CC Cases 38 (Delhi HC)**
- (VI) **Gopalbhai Mohanbhai Nagoda V. State of Gujarat IV (1993) CCR 3288 (DB) GHC**
- (VII) **Uttam V. State of Maharashtra, Crl. Appeal No. 333/2012 dated 05.02.2021 Bombay High Court.**
- (VIII) **Nanjaappa V. State of Karnataka MANU/SC/0788/2015.**

9. Per contra, at the outset, the legal objection has been taken by the CBI with respect to the reliance of the documents filed by the accused persons at the stage of charge. No such defence documents can be looked into at this stage. Further, Ld. Sr. Public Prosecutor for CBI has vehemently opposed the application for discharge of accused stating at the outset that the validity of prosecution sanction cannot be raised at this stage and the same is always a matter of trial. In this regard, reliance is placed upon judgment of Hon'ble Supreme Court in case titled **CBI V. Pramila Virendra Kumar Agarwal & Ors, Crl. Appeal Nos-14891490 of 2019 dated 25.09.2019.**

9.1 Further, it is argued that the sanction for prosecution of the accused/applicant is valid as the same has been granted by the competent authority i.e Deputy Commissioner of Police, South District, Delhi, where the accused persons were posted when they committed the offence under the PC Act. Reliance is also placed on provisions of Delhi Police Act, 1978 as well as Delhi Police (Punishment and Appeals) Rules, 1980. It is argued that that as per the statutory mandate, DCP is the Appointing Authority as

well as punishment authority for the police officials of the rank of SI or below. Thus, it is argued that the sanction accorded by Ms. Chandan Chowdhary (LW-12), D.C.P South District for prosecution of accused persons is legal and valid.

9.2 It is further argued that even the Order No. 14049-14128/Promotion Cell (Desk-IV)/P.Br./PHQ dated 02.06.2022 and notification No. 23129 dated 14.12.2021 qua A1 and A2 respectively are signed by an officer of the rank of DCP as the rules provide that DCP is competent to appoint as well as remove an officer of the rank of Sub-Inspector and below.

9.3 It is also argued on behalf of the CBI by placing reliance on **Delhi Police(Promotion and Confirmation) Rules ,1980** that as per Rule-9 of the said Promotion Rules, all the orders of promotions are issued centrally by the Police Headquarters. However, Rule-9 itself clarifies that the order of promotion shall be issued by Deputy Commissioner of Police for the officials upto the rank of SI. Therefore, even if the promotion orders relied upon by the accused persons are taken to be true and correct, the same has been signed by DCP, Headquarters as envisaged under Rule-9. Therefore, there is no infirmity in the sanction orders passed by Ms. Chandan Chowdhary (LW-12), D.C.P South District who is on equal rank to that of DCP Headquarters.

9.4 Further, as far as Ramkishan Mehta (A-1) is concerned, it is argued that the reliance placed upon order notification dated 14.12.2021 of Commissioner of Police, Delhi is not strict sense a promotion order. It is only an order of confirmation of “Functional Rank” of Head Constable without any monetary

benefits. Therefore, the accused cannot claim to be appointed to rank of Head Constable by the above-referred order.

9.5 Ld. Sr. Public Prosecutor for CBI has further argued that there is sufficient *prima facie* material on record to frame charge for the offence u/s 7 of P.C Act 1988 as alleged in the chargesheet against both the accused persons namely Ramkishan Mehta (A-1) and Karampal (A-2). Hence, dismissal of the applications for discharge of the accused persons is prayed .

10. In rebuttal, the Ld. Counsel for accused persons argued that as far as the promotion orders are concerned, the same have been obtained through RTI by them. These are not disputed documents which cannot be looked into at this stage. It is not their defence, rather they are questioning the legality of Sanction orders Dated 23.12.2022 (D-19) which is based upon their appointments on the said ranks only .

10.1 As far as the reliance placed upon Section 12 of Delhi Police Act or Delhi Police (Promotion and Confirmation) Rules 1980 by the CBI is concerned, the said provisions for Rules have to be read as per the mandate as spelled out in Article 311 of the Constitution. The reliance is also placed upon Section 21 of Delhi Police Act which provides for power of punishment and the said power being subject to the Article 311 of the Constitution. Therefore, it is argued that the legal argument raised on behalf of CBI is without any basis.

11. Heard and considered.

12. The first legal issue raised on behalf of the prosecution on the application for discharge is that the validity of prosecution sanction cannot be raised/considered at this stage and the same is

always a matter of trial. The law on the said issue is well settled that the prosecution sanction is *sine qua non* for the prosecution of a public servant under the Prevention of Corruption Act, 1988.

12.1 The issue of validity of the prosecution sanction and stage at which the said objection can be raised has been discussed by the Hon'ble Supreme Court in **Nanjaappa V. State of Karnataka (supra)** case and the relevant para-15 of the same is reproduced hereunder:

15. The legal position regarding the importance of sanction under [Section 19](#) of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to [Section 19\(1\)](#). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. **In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law.** If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

12.2 Therefore, the said proposition of law as propounded makes it clear that the issue of valid prosecution sanction can be raised at any stage and the Court can discharge the accused in case it finds the sanction to be invalid in the eyes of law. The judgment relied upon by CBI in **CBI V. Pramila (supra)** case is distinguishable on facts as in that case Sanction was challenged on account of non-application of mind, which

is not the case herein .The other judgments relied upon by CBI too are on same point which is not issue herein as the illegality of sanction has been raised herein.

12.3 The second objection taken by the prosecution is with regard to the admissibility of the promotion orders relied upon by the accused persons filed alongwith their applications. It is argued on behalf of the prosecution that the said documents not being part of chargesheet cannot be looked into at this stage. The said argument on behalf of prosecution has to be dealt with by taking into account the contents of the application and reply furnished by them in this regard. The CBI in its reply to both the applications of A-1 and A-2 qua the said promotion orders has simplicitor claimed that the said documents are matter of record. So, there is no dispute as to the authenticity of the said documents which are promotion orders issued by Commissioner of Police, Delhi. Even otherwise, the entire case of the prosecution as well as sanction order (D-19) also specifies the rank or appointment of the accused persons at the time of the commission of offence. Therefore, in the said backdrop, the objection taken on behalf of the CBI regarding the said promotion orders cannot be looked into is without any legal basis.

13. The limited legal question raised in the present application seeking discharge of the accused persons is the invalidity of sanction under Section 19 of the PC Act 1988 on account of in-competency of D.C.P. Ms. Chandan Chowdhary (LW-12). It is pleaded on behalf of

the accused persons/applicants that sanction in the present case has been accorded by Ms. Chandan Chowdhary (LW-12) the then Deputy Commissioner of Police, South District, Delhi. But, it is argued that the said sanction is invalid and void as she is the officer below the rank of Appointing Authority and thus, non-est in the eyes of law thereby rendering the prosecution of the accused being illegal. The accused persons, in support of the said averments, have placed reliance on two promotion orders i.e Order No.14049-14128/Promotion Cell (Desk-IV)/P.Br./PHQ dated 02.06.2022 of Ramkishan Mehta (A-1) & No. XIII/12(21)2021 23130-269/CB-II (Desk-IV) PHQ, dated Delhi 14.12.2021 of Karampal (A-2) whereby the applicants/accused persons were promoted to the rank of Head Constable. Both the said orders of promotion and appointment have been issued by the Commissioner of Police, Delhi though the same has been signed on his behalf by the Deputy Commissioner of Police (HQ).

13.1 Therefore, in view of mandate of the law as stipulated under Article 311 of Constitution of India, Deputy Commissioner of Police South District, Delhi was not empowered to remove the applicants/accused persons Ramkishan Mehta (A-1) and Karampal (A-2) from services. The said powers lies with the Commissioner of Police.

ACCUSED NO.2 HEAD CONSTABLE KARAMPAL

14. The existence as well as authenticity of the afore-mentioned promotion orders dated 12.11.2016

and 28.08.2019 of the accused No.2 Karam Pal are not disputed on behalf of CBI and are claimed to be matter of record. As far as promotion order dated 14.12.2021 is concerned, there is no question mark over the same. The name of the accused herein finds mention at serial no. 280 and he has been promoted to the rank of Head Constable (Exe.) on regular basis w.e.f 12.09.2018 and placed on probation for a period of two years. The said order has been issued by Commissioner of Police and signed on his behalf by Deputy Commissioner of Police (Establishment). So, it is clear from the above-noted order that the Appointing authority for the accused herein to the rank of Head Constable is Commissioner of Police and not the Deputy Commissioner of Police.

15. In the said backdrop, the argument advanced on behalf of prosecution is by placing reliance on Section 21 of Delhi Police Act 1978 as well as The Delhi Police (Punishment and Appeal) Rules 1980, which apparently empowers Deputy Commissioner of Police the authority to award punishment of removal from service etc for any officer upto the rank of Inspector. The appointment power u/s 12 of the Act too lies with DCP. Similarly, Rule 12 of The Delhi Police (Punishment & Appeal) Rules 1980 too confers the power of removal etc upon Deputy Commissioner of Police for the officials of the rank upto Sub Inspector. But the issue herein is as to whether the said provisions under the Delhi Police Act or

the Delhi Police (Punishment and Appeal) Rules 1980 have to be read in isolation or subject to the mandate of the law as enshrined under Article 311 of the Constitution of India. The Article 311 of the Constitution of India provides as under:

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

16. So, the position of law as laid down by the Constitution of India is clear that any member of service of Union etc cannot be dismissed or removed from the post by authority subordinate to by which he was appointed. Further, Section 21 of Delhi Police Act, 1978 which has been relied upon by the prosecution itself provides that said provision is subject to mandate of the Article 311 of Constitution of India. Therefore, the Delhi Police Act or Rules, 1980 relied upon by the prosecution have to be read in accordance with the mandate of law as clearly stipulated under Article 311 of Constitution. In the present case in hand qua the accused Karampal his Appointing Authority to the post of head Constable is Commissioner of Police .

17. The next limb of the argument advanced on behalf of CBI is by placing reliance upon Delhi Police (Promotion and Confirmation) Rules 1980. It was argued

by placing reliance on Rule-9 that as per the said Rule, all the promotion orders are processed centrally at Police Headquarters, but are issued by the DCP (HQ) in respect of officials of the rank of Sub-Inspector, Assistant Sub Inspector, Head Constable and Constables. Therefore, the grant of Sanction Ms. Chandan Chowdhary (LW-12) who is the officer of rank of D.C.P is valid as the promotion order too has been issued by the officer of the rank of DCP(Headquarters).

18. The reliance upon the said Rules and the manner in which the Rule-9 has been interpreted by the prosecution is clear misinterpretation of the true context of the Rules. The entire contents of the said Rules, whether it is the constitution of Departmental Promotion Committees or processing of promotion orders or preparation of promotion list, all reflects that the the final authority being with Commissioner of Police. The constitution of Promotion Committees is done by Commissioner of Police only. Rule-9 rather clarifies that the promotion is to be dealt with by police headquarters functioning under Commissioner of Police Delhi. The mere issuance of promotion orders under the signatures of Deputy Commissioner of Police (Headquarters-1) does not make the said promotion order to be issued by his office. But he signs the promotion order under the authority and acting on the behalf of Commissioner of Police which is also the case herein as reflected from the promotion order no. XIII/12 (21)2021 23130-260/CH-II

(Desk-IV) PHQ, dated 14.12.2021 (vide notification No. 23129) as relied by Karampal (A-2).

19. Therefore when seen in the light of above said settled proposition of law, it is apparent that the Sanctioning Authority Ms. Chandan Chowdhary (LW-12) Deputy Commissioner of Police is the authority subordinate / lower to the rank of competent/appointing authority i.e Commissioner of Police. Therefore, the Sanction accorded by Ms. Chandan Chowdhary (LW-12) is invalid in the eyes of law.

20. The said issue has been directly dealt with by Hon'ble High Court of Delhi in case titled **Davinder V. State ILR (1974) II 400 (DHC)**, wherein the accused was promoted and appointed to the rank of SI by an order passed by D.I.G , but the prosecution sanction under Section 19 of the PC Act 1988 was granted by Superintendent of Police (SP). In the said backdrop, the Hon'ble High Court observed as under:

“The irresistible conclusion from the perusal of the notification issued by the Deputy Inspector General of Police is that it was he who appointed Davinder Singh to officiate as Sub Inspector and ordered that he be posted in Hissar District. That being so, Davinder Singh could not be dismissed from the post of the Sub Inspector by the Superintendent of Police, being an authority subordinate to the appointing authority, viz. Deputy Inspector General of Police, Ambala Range. No doubt, according to the Police Rule, the Superintendent of Police of a District is competent to appoint a Sub Inspector but what has to be considered in the instant case is the factum of appointment and not the competent authority who could have appointed Davinder Singh to the rank of a Sub Inspector. The

competency of authority to order removal or dismissal has to be determined with reference to the requirements of [Article 311\(1\)](#) which postulates that the authority that orders dismissal or removal should not be subordinate in rank to the authority which appointed the civil servant.

21. In the light of settled legal proposition as propounded by Hon'ble High Court of Delhi, it leaves no *iota* of doubt even though as per the provisions of Delhi Police Act 1978 as well as Delhi Police (Punishment and Appeal) Rules 1980 powers of appointment and removal upto the rank of Inspector are with officers of rank of Deputy Commissioner of Police, But in the present case in hand, the fact remains that the Appointing Authority qua accused no. 2 herein is the Commissioner of Police. **Therefore, the sanction accorded by Ms. Chandan Chowdhary (LW-12), Deputy Commissioner of Police South District, becomes vitiated and invalid. Consequently, the application moved under Section 19 of the Prevention of Corruption Act 1988 seeking discharge/dropping of proceedings qua accused/ applicant Karampal (A-2) son of Sh. Dayanand is allowed.**

ACCUSED NO.1 HEAD CONSTABLE RAM KISHAN MEHTA

22. Now coming to same plea advanced by accused Ramkishan Mehta (A-1). He has placed reliance upon the promotion order dated 02.06.2022 vide which he was promoted to the rank of Head Constable. The said order too has been issued by the office of Commissioner of

Police, Delhi. But the language of the said order as well as the conditions incorporated in it, makes it apparent that it is not a promotion order in the strict legal sense. The relevant part of the promotion of the said order and conditions contained therein are reproduced hereunder:

“ **ORDER** ”

The Commissioner of Police, Delhi is pleased to assign Functional Rank of Head Constable to the following Constables in their respective cadre with immediate effect to cope with emergent operational requirements of Delhi Police and in the interest of Government work, on the recommendation of the Screening Committee subject to the conditions given hereunder:

.....
.....

1. **There will be no change in existing seniority structure of any rank. The one who is granted functional rank shall continue to be on the seniority list of his/her substantive rank as before and will be considered for regular promotion on his/her turn.**
2. The grant of rank neither affect the sanctioned strength of their substantive rank nor of the rank granted under this mechanism.
3. His/her rank under this mechanism will only be the personal rank of the person so designated.
4. He/she will be eligible to wear uniform of the rank to which he/she is designated.
5. **He/she will not be eligible for any additional benefits or perks.**
6. He/she may exercise such powers under Delhi Police Act which has been vested to th badge/rank he/she will wear.
7. He/she has to perform duties and responsibilities of the rank granted under this mechanism as well as that of his /her substantive rank if required by superior officers.
8. **He/she shall retain their belt/range No. of the substantive rank.**

9. They will undergo 30 days refresher course at STU of District/Units to make them capable to perform higher responsibilities. The course syllabus will be provided by Delhi Police Academy.

.....”

23. It is, thus, apparent from the contents of the said order that only a functional rank of Head Constable was given to the constables named in the said order and the reasons for the same was to cope up with emergent operational requirements of Police. Similarly, the grant of said functional rank was subject to the conditions as enumerated from point 1 to point 9. The contents of the said 9 conditions makes it apparent that it is not a substantive promotion order giving substantive rank of Head Constable or conferring any additional financial benefits or perks. Even the belt and range number was retained by the officials named in the said order. The said belt number was of the substantive rank i.e Constable. Therefore, for all legal purposes, Ramkishan Mehta (A-1) continued to remain on his substantive rank and was to be considered for regular promotion to the rank of Head Constable as and when time arrived. He was merely performing the duties of Head Constable for the time being due certain emergent operational requirement .The said functional rank could have been withdrawn at any point of time, without raising of any right or claim over it by Ramkishan Mehta (A-1).

24. In the said backdrop, the reliance placed upon by Ramkishan Mehta (A-1) upon the said promotion order is

misplaced and it has to be held that his Appointing Authority to the substantive rank of Constable was DCP only. Therefore, the grant of sanction by Ms. Chandan Chowdhary (LW-12) is valid as far as he is considered.

25. Now coming to merits of the allegations. As far as Ramkishan Mehta (A-1) is concerned, the prosecution has placed reliance upon the complaint of complainant namely Pawan Gupta, voice recordings as well as statements of the witnesses who are part of the trap team. The said trap team laid the trap on 13.11.2022 when complainant Pawan Gupta delivered the bribe amount of Rs.5000/- to accused A-1 as per their demand which was allegedly accepted by A-2 on his behalf. The said bribe amount was delivered at police booth Lado Sarai, Police Station Saket. Thus, at this stage prima facie there is sufficient material on record to frame charge against accused Ramkishan Mehta (A-1) for the offences punishable under Section 7 of Prevention of Corruption Act 1988 read with Section 120 B IPC.

26. In view of the above, accused/applicant namely Karampal S/o Dayanand (A-2) is accordingly discharged in the present case. The CBI shall be at liberty to obtain fresh sanction from the Competent Authority and file a fresh chargesheet, if sanction is accorded by the Competent Authority.

27. A separate Charge for offence u/s 7 of Prevention of Corruption Act, 1988 read with Section 120-B IPC be framed against accused Ramkishan Mehta S/o late Dharampal. The application for discharge filed by him accordingly stands dismissed .

It is though clarified herein that the present order has been passed only on technical aspect of grant of sanction for prosecution of accused/applicant HC Karampal herein.

**Announced in the open Court (Gagandeep Singh)
on 29th November 2023 Spl.Judge, PC Act, CBI-04
Rouse Avenue Courts,
New Delhi**