CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH

OA 2879/2017

Reserved on: 03.01.2020
Pronounced on: 23.01.2020

Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Sh.C.L.Sharma,
S/o Sh. N.K.Sharma,
A.E (C)/ Retd. DDA,
77-C, Shyam Enclave, Delhi-110032 … Applicant

(By Advocate: Mr. Adigya Agrawal for Mr. Sidharth Joshi)

VERSUS

1. DDA
Through its Vice Chairman,
Having address at Vikas Sadan,
INA, New Delhi.

2. Chief Vigilance Officer of DDA
Having address at Vikas Sadan,
INA, New Delhi.

3. Vice Chairman of DDA
Through its Vice Chairman,
Having address at Vikas Sadan,
INA, New Delhi.

4. Engineer Member
Having address at Vikas Sadan,
INA, New Delhi.

5. Commissioner (Personnel)
Having address at Vikas Sadan,
INA, New Delhi. … Respondents

(By Advocate: Mr. Rajeev Kumar)

O R D E R

(Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Adigya Agrawal for Mr.Sidharth Joshi, counsel for applicant and Mr. Rajeev Kumar, counsel for respondents, perused the pleadings and all documents produced by both the respondents.

2. In this OA, the applicant has prayed for the following reliefs:

"i Quash/ set aside the Impugned Order bearing No. F.27(75)87/EE (Vig.)-V/DDA/2568 dated 18/04/2017 (Annexure A-1) passed by Hon'ble LG.

ii Quash/ set aside the Impugned Order bearing No. 08/Vig./2017/865 dated 08.02.2017 (Annexure A-2) passed by the Vice Chairman.

iii Quash/ set aside the Impugned Order bearing No. 211/Vig./2005/5523 dated 15/06/2005 (Annexure A-3) passed by the Engineer Member.

iv Quash/ set aside the Impugned Order bearing No. 374/Vig./04/10670 dated 18.11.2004 (Annexure A-4)) passed by the Commissioner (P), and

v Quash/ set aside the Impugned Order bearing No. F.27 (75)87 /Vig. /EE(V) /5 /M.J-5(5)2157 dated 05/03/2001 (Annexure A-5) issued by the Disciplinary Authority;

vi Award all consequential benefits;

vii Award cost in favour of the applicant;

viii Pass such other and further orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. The relevant facts of the case are that on the allegation of preparing in wrong bills for payment with respect to the execution of work with respect to LIG houses at Nand Nagri and thereby causing loss to the respondent-DDA, an inquiry was initiated against the applicant under Regulation 25 of the D.D.A. Conduct, Disciplinary and Appeal Regulations, 1999 vide Memorandum dated 05.03.2001. The detailed articles of charge are as follows:-

"Article-1

That Shri C.L.Sharma Junior Engineer while functioning as Junior Engineer in HD-XXII (now ED-10) during the period of Sep'84 to Dec'84 was J.E. incharge of the work of c/o 378 LIG houses at Nand Nagiri, Pocket B, C & D including internal development, water supply & sanitary installations, executed by M/s Gurmat Estates (P) Ltd., under Agreement No. 4/HD-XXII/A/83-84.

That the said Sh. C.L.Sharma while posted on the said work proposed the payment 14th R/A bill by making recovery of less quantity of cement than the quantity of cement actually issued and consumed as per the cement register upto the date on preparation of the 14th R/A bill. This resulted in undue temporary benefit to the contractor to the tune of Rs.44,300/- against he 14th R/A bill. This has resulted in a loss of Rs.699/- against the 14th R/A bill by way of interest to the DDA.

The said C.L.Sharma by his above act exhibited lack of devotion to duty and conduct unbecoming of an employee of the Authority, thereby violating sub-rule 1(i) & 1(iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999.

Article-II

That the said Shri C.L. Sharma while posted on the said work violated departmental instructions issued by Chief Engineer vide Circular no. CE 1(27)77/421 dt. 18.11.79 and CE 1(27)82-83/6056 dt. 20.6.83 by not making recovery of

different materials in three equal monthly instalments against which secured advance was paid and remained unutilized for more than six months. The said Shri C.L.Sharma proposed payment of secured advance on different materials arbitrarily for quantities much beyond the requirement of the work as stipulated in the said agreement thereby blocking funds to the tune of Rs.4,11,319/- resulting into a loss of Rs.9,014/- by way of interest of the said amount and a further loss of Rs. 3,83,194/- on account of a part of the unutilized materials having been removed from the site by the contractor subsequently.

The said Shri C.L.Sharma thus proposed secured advance not commensurate with the requirement of the work and failed to make timely recovery as stipulated in para 10.2.21, 10.2.222 and 10.2.24[a] of the Central Public Works Account Code and exhibited lack of devotion to duty, lack of integrity and conduct unbecoming of an employee of the Authority, thereby violating sub-rule 1(i), 1(ii) & 1 (iii) of Regulation 4 of the DDA conduct, Disciplinary and Appeal Regulations, 1999.

Article-III

That the said Shri C.L.Sharma while posted on the said work proposed payment of secured advance on bricks for the quantity much beyond the quantity required for completion of the work as per items stipulated in the schedule of quantities attached with the agreement items no. (4.1, 4.2, 4.3, 4.4, 11.II & 11.12) thereby giving undue temporary monetary benefit of Rs.4,91,290/- to the contractor resulting into a loss of Rs. 60,524/- by way of interest on the said amount and a loss of Rs.2,83,065/- and interest thereon on account of a part of the remaining un-required bricks having been removed from the site by the contractor subsequently.

The said Shri C.L.Sharma thus proposed secured advance not commensurate with the requirement of the work and failed to make timely recovery as stipulated in para 10.2.21, 10.2.222 and 10.2.24[a] of the Central Public Works Account Code and exhibited lack of devotion to duty, lack of integrity and conduct unbecoming of an employee of the Authority, thereby violating sub-rule 1 (i), 1(ii) & 1 (iii) of Regulation 4 of the DDA conduct, Disciplinary and Appeal Regulations, 1999."

4. Alongwith the articles of charges, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. As the applicant did not admit his guilt, an Inquiry Officer was appointed. The Inquiry Officer after following the principles of natural justice and the applicable rules for conducting the departmental enquiry examined the witnesses and taken on record defence statement submitted by the applicant and discussed and analyzed the evidence and came to the conclusion that article of charge no. 1 and III are not proved and article of charge no. II is proved to a minor extent vide his inquiry report dated 26.05.2003. The disciplinary authority after examining the inquiry report prepared a tentative disagreement note and he secured the second stage advice of the CVC and serve the entire material on the applicant vide notice dated 20.07.2004 giving 15 days time to the applicant to make his representation. The applicant submitted his representation. The disciplinary authority after considering the inquiry report, representation of the applicant against the disagreement note and the 2nd stage advice of the CVC and on the enquiry report concluded that the charges against the applicant are partly proved and imposed a penalty of stoppage of one increment for a period of one year on non cumulative basis vide order dated 18.11.2004. The applicant filed an appeal. The appellate authority also considered the entire material and carefully considered the

grounds raised in his appeal and after giving the applicant personal hearing on 26.05.2005, rejected his appeal vide order dated 15.06.2005. The applicant filed a revision petition which was also dismissed by the revisional authority vide order dated 8.02.2017.

5. The counsel for the applicant vehemently and strenuously submitted that the alleged lapse happened in 1984 whereas the departmental enquiry was proposed in 2001 and hence by holding departmental enquiry after such a long gap the applicant was prejudiced and that as held by the Inquiry Officer that article of charge no. 1 and III are not proved and article of charge II is proved only to a minor extent and hence the OA filed by the applicant be allowed.

6. The counsel for the respondents equally vehemently submitted that as and when the alleged lapse came to the notice of the authorities, departmental proceedings were initiated and that a departmental enquiry was held following the principles of natural justice and the relevant rules as such there is no merit in this OA.

7. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon’ble Supreme Court in the following judgments:

(1). In the case of **K.L.Shinde** Vs. **State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-
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> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are

they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi** Vs. **UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the

Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Recently in the case of **Union of India and Others** Vs. **P.Gunasekaran** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence."

8. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that there is no violation of any procedural rules or principles of natural justice, the OA is devoid of merit, and hence dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N.Terdal)
Member (J)

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