

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No.100/590/2012

New Delhi this the 8th day of August, 2016

Hon'ble Mr. Justice, M. S. Sullar, Member (J)

Hon'ble Shri V. N. Gaur, Member (A)

Rodas Kumar,
S/o. Shte Singh,
R/o. Village Pipri, Post Milkpur,
Distt-Bharatpur, Rajasthan.

....Applicant

(Argued by: Mr. M. K. Bhardwaj, Advocate)

Versus

Govt. of N.C.T of Delhi, through :

1. The Commissioner of Police,
PHQ, MSO Building, IP Estate,
New Delhi-02.

2. The Joint Commissioner of Police,
Northern Range, Delhi

3. The Additional Dy. Commissioner,
Outer Distt. Delhi.

....Respondents

(By Advocate : Mr. N. K. Singh for Ms. Avnish Ahlawat)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

Applicant, HC Rodas Kumar, has preferred the instant Original Application (OA), challenging the impugned summary of allegation (Annexure A-4), findings of Enquiry Officer (EO) dated 07.08.2011 (Annexure A-6), impugned orders dated 25.01.2011 (Annexure A-3), whereby a Departmental Enquiry (DE) was initiated and order dated 10.09.2011 (Annexure A-1), vide which a penalty of dismissal

from service was imposed on him by the Disciplinary Authority (DA). He has also assailed the impugned order dated 26.09.2011 (Annexure A-2) by means of his appeal, which was dismissed by the Appellate Authority (AA) as well.

2. The sum and substance of the facts and material, exposted from the record, relevant for deciding the instant OA is that on 23.07.2001, applicant was recruited as Ct. (Ex.) on the basis of Scheduled Tribe (ST) certificate (Meena), allegedly issued by SDM, Tehsil Bayana, Distt. Bharatpur, Rajasthan. Subsequently, the caste certificate of the applicant was found to be fake. Thus, he was stated to have committed a grave misconduct at the time of his recruitment.

3. As a consequence thereof, the applicant was dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"). The Departmental Enquiry (DE) was initiated against him and EO was appointed vide impugned order dated 25.01.2011 (Annexure A-3) by the competent authority. After following the due procedure of the enquiry, the following summary of allegation was served upon him (applicant), vide order dated 18.03.2011:-

"It is alleged against you HC Rodas Kr. No. 232/OD(28011627) that you enlisted in Delhi Police as constable (exe) on 23.09.01 as a Scheduled Tribe (sic) (Meena) candidate on the basis of caste certificate issued by SDM Tehsil Bayana distt. Bharatpur Rajasthan vide no. 1260 Dt. 12.11.96. The Deputy Commissioner of Police (Estt.) Delhi Police Headquarters New Delhi vide Head Quarter Memo No. 4312-1351.Rect. Cell (Ac-V) Dt. 01.06.09 Directed for re-verification of ST Caste certificates furnished by a various Delhi Police employees under ST category since 1995. Subsequently a list issued by PHQ vide DO

1373/R.Cell (Ac-V) PHQ dt. 28.01.10 for re-verification of S.T. Certificate in which your name has been mentioned at Sl. No. 77.

HC Raj Kumar No. 1393/OD and HC Shyam Sunder No. 3084/OD were deputed for re-verification of your S.T. Certificate vide letter No. 8756/CR/OD, dt. 11.11.10 & 9881/CR/OD 14.12.10 respectively. In turn office of Tehsildar (sic), Bayana, Bharatpur vide their letter No. R/Verif./10/180, dt. 16.11.10 & R/10/196 dt. 15.12.10 stated that HC Rodas 232/OD is not a resident of village Pipli, Tehsil Bayana and never resided at the address of village Pipli Tehsil Bayana, Bharatpur, Rajasthan. The S.T. Certificate No. 1260 dated 12.11.96 in respect of HC Rodas Kumar S/o Sh. Tej Singh was not issued from the office of Tehsil Bayana, Bharatpur, Rajasthan.

The above act on your part amounts to grave misconduct concealment of facts and unbecoming of a member of a police force which renders you liable to be dealt with departmental action under the provision of Delhi Police (Punishment & Appeal) Rules 1980 & SO No. 371/09 of Delhi Police.”

4. Subsequently, the EO recorded and evaluated the evidence of the parties in the DE and came to a definite conclusion that the charges against the applicant stand duly proved, vide enquiry report dated 07.08.2011 (Annexure A-5).

5. Taking into consideration the evidence on record and reply of the applicant, a penalty of dismissal from service was imposed on him by impugned order dated 10.09.2011 (Annexure A-1) by the DA. The punishment order was upheld, vide order dated 26.09.2011 (Annexure A-2) by the AA.

6. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned DE proceedings and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The case set up by the applicant, in brief, insofar as relevant, is that, he got caste certificate as per his entitlement from the competent authority. He could not have

been subjected to disciplinary action. The father of the applicant also remained in the village Pipli for long. However, he had to left the village for the welfare of his children. His house is still available in his native village. It was alleged that the authorities have not considered the fact that the caste certificate was genuine, as no authority has declared it forged. The EO was determined to prove the charge, as he has completely ignored the statement of defence witnesses. The entire proceedings were conducted in violation of statutory rules and principles of natural justice. The relevant documents were neither produced during the departmental proceedings nor provided to the applicant. The punishment of dismissal awarded to the applicant, was stated to be excessive and disproportionate to his misconduct. He was punished without any fault on the basis of assumption and presumption. EO has not given the reasoning and has not even assessed the evidence produced during the enquiry. Even it has not been proved that there was any ill motive on the part of the applicant.

8. According to the applicant, the findings of EO are illegal, vague and the impugned orders based on such illegal enquiry report are vitiated. Applicant was having unblemished service record. The revenue authorities of Bayana Tehsil (Rajasthan) have submitted the fake report

without consulting the record. Even Tehsildar was not examined in the enquiry, to prove his report.

9. Levelling a variety of allegations and narrating the sequence of events, in all, the applicant claimed that the impugned departmental proceedings and orders are illegal, whimsical, mala fide, against the statutory rules and principles of natural justice. On the strength of the aforesaid grounds, the applicant has sought quashing of the impugned departmental proceedings as well as orders, in the manner indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant, filed the reply wherein it was pleaded as under:-

"1. Briefly the facts of the case are that a regular Departmental Enquiry was initiated against Ex HC Rodas Kumar (hereinafter called the applicant) under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 vide order dated 25.01.2011 on the allegations that he was enlisted in Delhi Police as Constable (Exe) on 23.07.2001 as a Scheduled Tribe (Meena) candidate on the basis of Caste Certificate issued by SDM, Tehsil Bayana, Distt Bharatpur, Rajasthan vide No. 1260 dated 12.11.1996. The Dy. Commissioner of Police, Delhi Police Head Quarter New Delhi vide Memo dated 01.06.2009 had directed for re-verification of ST Caste Certificate furnished by various Delhi Police employees under ST Caste Certificate furnished by various Delhi Police employees under ST category since 1995. Further a list was received from PHQ vide D.O. dated 28.01.2010 for re-verification of ST Certificate in which the name of the applicant was mentioned at Sl. No. 77. The ST certificate submitted by applicant was sent on Tehsildar Bayana Distt. Bharatpur, Rajasthan for re-verification vide office order dated 27.08.2009 but no reply was received despite 03 reminders issued vide office order dated 03.02.2010, 15.04.2010 and 27.10.2010.

2. That HC Raj Kumar was deputed to obtain the re-verification report of ST Certificate in respect of applicant from SDM, Tehsil Bayana, Bharatpur Rajasthan vide letter dated 11.11.2010. In turn HC Raj Kumar obtained a report from the office of the Tehsildar Bayana, Bharatpur, Rajasthan on 16.11.2010 in which it is stated that applicant is not a resident of Village Pipli, Tehsil Bayana, and he had never resided at the above address. The report was sent to PHQ vide office memo dated 24.11.2010 and PHQ asked to verify from the concerned authority whether the ST Certificate submitted by the applicant at the time of appointment was issued to him from their office or otherwise.

3. That accordingly HC Shyam Sunder was deputed for re-verification of ST Certificate in respect of the applicant from the concerned Tehsildar Bayana, Bharatpur vide office order dated 14.12.2010. The HC Shyam Sunder obtained a report from the office of Tehsildar Bayana vide office letter dated 15.12.2010 in which it is stated that applicant was not a resident of Village Pipli, Tehsil Bayana and he had never resided at the above address. The ST Certificate in respect of HC Rodas Kumar S/o Tej Singh was not issued from the office of the Tehsildar Bayana, Bharatpur Rajasthan. This is a serious lapse on the part of the applicant as he managed the ST Certificate by fraudulent means and on the basis of this fake caste certificate he succeeded in getting appointment in Delhi Police as Constable (Exe.).”

11. The case of the respondents further proceeds that the EO completed the enquiry in accordance with law. After taking into consideration, the prosecution and defence witnesses, he came to a definite conclusion that the charges framed against the applicant stand fully proved.

12. Thereafter, the DA after carefully going through the findings of EO, statement of PWs, statement of defence and DWs and after hearing the applicant in Orderly Room (OR) on 09.09.2011, awarded a penalty of dismissal from service, which too was rightly upheld by the AA.

13. It was further pleaded that as per the report (Exhibit PW-4/B) of Tehsildar Bayana, District Bharatpur (Rajasthan), the ST certificate bearing No.1260 dated 12.11.1996 was not issued from their office. Thus, it was clear that applicant had produced the forged caste certificate to join in Delhi Police. Consequently, a criminal case was registered against him on accusation of having committed the offences punishable under Sections 420/471 IPC vide FIR No.162/2011 by the police of Police Station, Mangol Puri.

14. Virtually reiterating the validity of the impugned EO's report and orders, it was claimed by the respondents that the applicant was guilty of grave misconduct and was accordingly dismissed from service. It will not be out of place to mention here that the respondents have stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal. That is how we are seized of the matter.

15. Having heard the learned counsel for the parties at quite some length, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

16. Ex-facie, the arguments of learned counsel that although there is no sufficient evidence on record, but the applicant was wrongly held guilty and since the relevant authorities have not considered the defence evidence, so the impugned orders are vitiated and illegal, is not only devoid of merit but misplaced as well.

17. As is evident from the record, that very specific and serious allegations are assigned that the applicant procured a fake caste certificate, cheated the department and obtained his employment on the basis of fake caste certificate. The prosecution, in order to substantiate the charges framed against the applicant, examined PW-1 HC Raj Kumar, who

has, inter alia, stated that he went to Tehsil Bayana, District Bharatpur (Rajasthan) for verification of ST certificate of the applicant, as directed by his superiors along with letter dated 11.11.2010 (Exhibit PW-1/A) issued from the office of DCP/OD, Delhi regarding re-verification of the certificate. This letter was addressed to SDM, Tehsil Bayana. On reaching there, he handed over the same letter in the office of Tehsildar Bayana, Bharatpur (Rajasthan). He further maintained that he received letter dated 16.11.2010 (Exhibit PW-1/B) addressed to, and handed over to DCP/OD, Delhi. PW-2 ASI Harender has produced original caste certificate (Exhibit PW-2/A) bearing No.1260 dated 12.11.1996. Similarly, PW-3 HC Shayam Sunder stated that he went to Tehsil Bayana, Bharatpur (Rajasthan) with reference to letter dated 15.12.2010 again with forged caste certificate of HC Rodas Kumar (applicant). He reached the office of Tehsildar Bayana, where he received the letter dated 16.11.2010 duly signed and stamped by Tehsildar Bayana and handed over the same in HACR/OD.

18. Likewise, PW-4 Shri Parmanand Sharma S/o Prabhu Dayal Sharma, LDC in the office of Tehsildar Bayana, Bharatpur (Rajasthan), brought the original letters dated 16.11.2010 (Exhibit PW-4/A) and 15.12.2010 (Exhibit PW-4/B) and produced both letters from the official record. He has also produced the report of Patwari of that area (Exhibit

PW-4/C), which disproved that the caste certificate produced by the applicant at the time of recruitment was not issued by the office of Tehsildar Bayana (Rajasthan) and was fake & forged.

19. No doubt, applicant has examined private persons DW-1 Nawab Singh S/o Bhagwan Singh, DW-2 Bijender S/o Kishan Lal and DW-3 Madan S/o Ratan Lal, all these private witnesses have attempted to depose that the applicant is a younger son of Tej Singh belonging to Meena caste and he was residing in village Pipli 25-26 years ago, they do not know where they are living thereafter, but no implicit reliance can be placed on their statements as it is not difficult to procure such witnesses by the applicant in an unsuccessful attempt to protect his employment.

20. Moreover, the short and significant question that arises for our consideration is, as to whether the caste certificate bearing No.1260 dated 12.11.1996 is genuine or not? As mentioned hereinabove, the prosecution has got verified the genuineness of the caste certificate of the applicant and Tehsildar, Bayana, Bharatpur (Rajasthan), vide his report dated 15.12.2010, which is available at page 6 of the departmental enquiry file, informed the DCP, Delhi Police that the caste certificate of the applicant was not issued from the office of Tehsil Bayana, Bharatpur (Rajasthan). He has particularly testified that even no such village by the name

Pipli falls within the jurisdiction of Tehsil Bayana. He has reiterated the factum of issuance of fake caste certificate of the applicant, vide letters dated 16.11.2010 and 8/15.12.2010.

21. Meaning thereby, it stands proved on record that, neither village Pipli falls within the jurisdiction of Tehsil Bayana nor office of Tehsil Bayana issued any such caste certificate to the applicant, which is fake.

22. Sequelly, the submission of learned counsel that neither Tehsildar Bayana nor concerned Patwari were examined during the course of enquiry, so his report cannot be relied upon, has no force. There is no legal requirement to examine the Tehsildar/Patwari or other revenue officers of Bayana, Bharatpur (Rajasthan) in the departmental enquiry against the applicant, particularly when it stands proved on the record, from the cogent oral as well as documentary evidence discussed hereinabove, that the applicant obtained employment in Delhi Police on the basis of fake and forged caste certificate. There is no reason to disbelieve the statement of Shri Parmanand Sharma, LDC and the reports of Tehsildar prepared in discharge of his official duty as Revenue Officer. The EO has duly considered the statements of PWs and DWs in his report dated 07.08.2011, the operative part of which is as under:-

“In all 4 PWs and 3 DWs have been examined during the DE proceedings. I have carefully gone through the statements of PWs and DWs and also perused the Defence statement of the delinquent HC. During the

course of enquiry it was found that as per all the 3 DWs, the father of the delinquent HC resided in Pipli Village for a time but they don't know where they are living presently. His father worked as a labour on agricultural land of others in village but could not be proved. **Sh. Parmanand Sharma, LDC Teh. Bayana, Distt. Bharatpur, Rajasthan** clearly deposed that as per record available neither caste certificate was issued from Teh. Bayana nor he (delinquent HC) is the permanent resident of Vill. Pipli, Teh. Bayana, Distt. Bharatpur, Rajasthan. This has also been proved during the enquiry conducted by the area Patwari of Tehsil Bayana, Distt. Bharatpur, Rajasthan (as per report of Tehsildar Bayana ref. no. Reader/Enquiry/10/180 dt. 16.11.2010 & Reader/10/196 dt. 15.12.10). There is no reason to disbelieve the testimony of this P.W. The versions of DWs are not found sound in view of statements in this regard.

In view of the above discussion it is crystal clear that the delinquent HC has used the forged documents knowingly to get appointment in Delhi Police.

Conclusion :

In view of above discussion and considering the facts and circumstances, I have come to the conclusion that the charge framed against HC Rodas Kumar 232/OD stand proved without any iota of doubt."

23. Having completed all the codal formalities and concurring with the findings of the EO, the DA has rightly imposed the penalty of dismissal from service upon the applicant vide impugned order dated 10.09.2011 (Annexure A-1), which, in substance, is as under:-

"Tentatively agreeing with the findings of EO, a copy of the findings was delivered upon the delinquent HC for seeking his representation against the findings within 15 days from the date of its receipt. The delinquent received the copy of the findings of the EO and submitted his representation accordingly.

I have carefully gone through the statements of PWs/DWs, findings of E.O. defence statement, written representation and other material brought on DE file. The delinquent HC was also heard in Orderly Room on 9.9.2011, where he did not explain anything new other than the one in his written representation. He has mainly contended that the Enquiry Officer totally overlooked his defence submissions and not given any reasons to disbelieve the same. He has further stated that there is no mention in the charge that he used the forged documents knowingly to get appointment in Delhi Police. Whereas the Enquiry Officer in the concluding para has mentioned that the delinquent HC has used the forged documents knowingly to get appointment in Delhi Police, which is violation of mandatory instructions contained in para (G) of Standing Order No. 125 of Delhi Police. He has also advanced the plea that a report regarding his caste certificate may be obtained from the Tehsildar of Bayana, Distt. Bharat Pur, Rajasthan in order to find out whether he belongs to Meena Caste, which is ST caste as per notification of the Govt. of India.

The above pleas taken by the delinquent H.C. are not found tenable. As per the version of Tehsildar Bayana, Distt. Bharatpur (Raj.) (Ex. PW-3/A), the ST Caste Certificate No. 1260 dated 12.11.96 was not issued from their office. Hence, it is clear that the delinquent H.C. had produced forged caste certificate to join in Delhi Police. A criminal case FIR No. 162/2011 U/s 420/471 IPC, P.S. Mangol Puri has also been registered against the delinquent H.C. The reply and oral submission of the HC did not justify about the genuineness of the ST Caste certificate submitted by him at the time of his appointment. This is a very serious misconduct on the part of H.C. Rodas Kumar, No. 232/OD as he got appointment in Delhi Police on the basis of fake caste certificate, which is as per report of Tehsildar was not issued from their office. Under these circumstances not convincing with the defence contentions of the delinquent H.C. and keeping in view of gravity of his misconduct, the undersigned found him totally unfit to be retained in Delhi Police.

Keeping in view of above discussion and over all facts and circumstances of the case, I, Dr. P. Karunakaran, Addl. Dy. Commissioner of Police-I, Outer Distt., Delhi do hereby dismiss HC Rodas Kumar, No. 232/OD from the service of Delhi Police with immediate effect, which would meet the end of justice. His suspension period from 23.12.2010 to the date of issue of this order is decided as period not spent on duty.”

24. Likewise, all the issues raised by the applicant were reconsidered by the AA while dismissing his appeal, vide order dated 26.09.2011 (Annexure A-2).

25. It is now well settled proposition of law that, provisions of Evidence Act are not strictly applicable in the Departmental Enquiry, as are applicable in criminal trials. The EO was required to decide the real controversy between the parties, on the Doctrine of preponderance of probability of evidence. One line here and there in cross-examination of witnesses, which is irrelevant and foreign to the crux of the charge, ipso facto, is not a sufficient ground to ignore the entire cogent evidence produced on record by the prosecution.

26. In that eventuality, it cannot possibly be saith that either there is no cogent evidence on record against the

applicant or the relevant authorities have not considered the defence evidence of the applicant, as urged on his behalf.

27. Thus, in the absence of any procedural illegality and irregularity, in conduct of DE, no ground to interfere with the impugned enquiry proceedings and orders is made out, in view of law laid down by Hon'ble Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620.***

28. Therefore, once it is proved on record that applicant has obtained employment in Delhi Police on the basis of fake/forged caste certificate, then he cannot be heard to say that the punishment awarded to him is excessive and is not commensurate to the gravity of the charge in view of the ratio of law laid down by Hon'ble Apex Court in case ***Madhuri Patil Vs. Commissioner Tribal Development (1994) 6 SCC 241***, wherein it was observed that if it is proved that the caste certificate obtained by the employee was false, the appointing authority should cancel the appointment without any further notice. Such employee cannot plead that he has rendered the service for a longer period. It was also observed that equity, sympathy or generosity had no place where the original appointment rests on a false caste certificate.

29. Again, it was held by the Hon'ble Apex Court in case ***Ram Chandra Singh Vs. Savitri Devi (2003) 8 SCC 319***

that a fraud was anathema to all equitable principles and any affair tainted with fraud, could not be perpetuated or saved by application of any equitable Doctrine. It was also ruled by Hon'ble Apex Court in case **A.V. Papayya Sastry and Others Vs. Government of A.P. and Others JT 2008 (8) SC 57** that fraud vitiate all solemn acts. If order was obtained by reason of commission or fraud, even the principles of natural justice were not required to be complied with for setting aside such punishment order. It is settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, Tribunal or authority, is a nullity and non-est in the eyes of law and has to be treated as such.

30. It was also held by the Hon'ble Apex Court in case **Bank of India Vs. Avinash D. Mandivikar (2005) 7 SCC 690** that when a person secures appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. Same view was reiterated by Hon'ble Apex Court in case **U.O.I. Vs. Dattatray AIR 2008 SC 1678**.

31. Therefore, the ratio of law laid down in the aforesaid judgments, is *mutatis mutandis* applicable to the facts of the present case and is a complete answer to the problem in hand.

32. Moreover, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to

disciplinary proceedings. Above all, the jurisdiction of this Tribunal to interfere in DE proceedings is very limited. This matter is no more res integra.

33. An identical issue came to be decided by the Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs.**

U.O.I. & Others AIR 1996 SC 484 has ruled 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 officer 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 or 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”.

34. Sequelly, the Hon'ble Apex Court in the case of **K.L. Shinde v. State of Mysore, (1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence has ruled 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:-

"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."

35. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the evidence of the prosecution. The DA has rightly imposed the punishment of dismissal from service upon the applicant and the same was upheld by the Appellate Authority. The Disciplinary as well as Appellate authorities have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal, in the obtaining circumstances of the case.

36. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

37. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
08.08.2016