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

**O.A No.2050/2010**

**New Delhi this 10th day of May, 2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)**
**Hon'ble Mr. V.N. Gaur, Member (A)**

1. Som Dutt s/o Sh. Badle Ram
   r/o 9/5256 Old Sleempur
   Gandhi Nagar, New Delhi

2. Rajender Singh s/o Sh. Vakil Sharma
   r/o 5/55 Sargam Park
   Shastri Park, New Delhi

.. Applicants

(Argued by: Shri R K Jain, Advocate)

Versus

1. Commissioner of Police,
   PHQ, MSO Building,
   I.P. Estate, New Delhi.
2. The Special Commissioner of Police,
   (Armed Police),
   Police Headquarters
   IP Estate, New Delhi.
3. The Deputy Commissioner of Police,
   VIIth Bn./DAP
   PTA Malviya Nagar
   New Delhi
4. DCP (Vigilance)
   Police Bhawan
   Asaf Ali Road
   New Delhi

..Respondents

(By Advocate: Shri Amit Anand)

**ORDER (ORAL)**

**Justice M.S. Sullar, Member (J)**

The challenge in this Original Application (OA), filed by the applicants, Constables Som Dutt and Rajender Singh, is to the impugned Show Cause Notice (SCN) dated the

12.03.2010, enquiry report dated 09.04.2009 (Annexure A-4) and order dated 21.10.2009 (Annexure A-3) whereby a penalty of forfeiture of one year's approved service temporarily entailing proportionate reduction in their pay was imposed on them by the Disciplinary Authority (DA). They have also assailed the impugned order dated 11.05.2010 (Annexure A-1) passed by the Appellate Authority (AA)

2. The contour of the facts culminating .in the commencement, relevant for disposal of the instant Original Application (OA) and emanating from the record is that applicants, Som Dutt and Rajender Singh, while working as member of the Special Staff of Police Station, Mandawali, along with SI Badruddin and Constable Kewal Singh, were stated to have committed grave misconduct in discharge of their official duties. As a consequence thereof, they were charge-sheeted with the following allegations:-

> "It is alleged that SI Badruddin, No. D-3024 (PIS No. 16900069) Ct. Kewal Singh No. 8947/DAP (PIS No. 28892823), Ct. Rajender No. 8223/DAP (PIS No. 289603343) and Ct. Som Datt No. 8985/DAP (PIS No. 28800564) while posted in police Station Mandawali and acted as a special staff of PS Mandawali, they were sent to the shop of Shri. Mohd. Shaid r/o. H. No. 1216, Gali No. 48, Jafrabad, Delhi alongwith two informers Guddu and Pappu. They brought Shri Mohd. Shaid and his employee Banwari Lal at PS Mandawali and beat them mercilessly. They took Rs.10,000 as a bribe and relieved them in midnight on 12.01.2003, they did not make any DD entry in the Roznameha of PS Mandawali in this regard."

3. In the wake of departmental inquiry, initially a penalty of withholding of next increment temporarily for a period of

one year, was imposed on the officials by way of order dated 23.06.2005 by the Disciplinary Authority (DA). Their appeals were rejected as well vide its order dated 30.01.2006 passed by the Appellate Authority (AA). The penalty orders (therein) were quashed on account of violation of Rule 15 (2) of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules") to restart the disciplinary proceedings from the stage of obtaining prior approval of Additional Commissioner of Police as required under Rule 15 (2) of D.P. Rules by means of order dated 26.10.2007 in OA No.694/2006 passed by a Coordinate Bench of this Tribunal.

4. Having obtained the requisite approval, the Deputy Commissioner of Police again ordered initiation of departmental inquiry against the applicants.

5. In pursuance thereof, the Enquiry Officer (EO) was appointed to enquire into the charges. The EO came to a conclusion that the charges against the applicants stand proved. The DA (Annexure A-1) imposed the indicated impugned penalty.

6. However, keeping in view the grave misconduct committed by the applicants, the AA proposed to enhance the penalty. Consequently, a SCN dated 12.03.2010 (Annexure A-2) notice was issued to the applicants, to show cause as to why the penalty awarded to them be not enhanced. The applicants filed reply to the SCN. They were also heard in

Orderly Room (OR) on 07.05.2010. After following the due procedure, the enhanced penalty of forfeiture of three years approved service permanently, entailing proportionate reduction of their pay, was imposed on the applicants by way of impugned order dated 11.05.2010 (Annexure A-1) by the AA.

7. Aggrieved thereby, the applicants have again preferred the present O.A. bearing No.2020/2010. The O.A. was dismissed on merits by means of Order dated 10.04.2012 by a Coordinate Bench of this Tribunal.

8. Still aggrieved by the Order of this Tribunal, the applicants have filed ***Writ Petition (C) No.6290/2012*** and Hon'ble Delhi High Court set aside the Order and remanded the case back to this Tribunal for deciding the O.A. afresh vide Order dated 23.04.2013. The operative part of the Order is as under:-

> "12. It is trite that a Tribunal is the first forum where evidence has to be noted with care. Suffice would it be to state that it is the duty of the Tribunal to highlight the same. It would be a completely misdirected approach by a Tribunal to write that it is not the job of a Tribunal to re-appreciate evidence in a case where the case projected is that it is a case of no evidence. Appreciation of evidence would mean to determine its creditworthiness and its weight. But a finding relating to existence of evidence or no evidence is mechanical in nature by referring to said part of the evidence which has something to do with the finding of guilt.
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> 13. Disposing of the writ petition we set aside the impugned order dated April 16, 2012 passed by the Central Administrative Tribunal. OA No.2050/2010 is restored for adjudication on merits afresh."

That is how we are seized of the matter.

9. At the very outset, it will not be out of place to mention here that all other points pleaded in the O.A. by the applicants were duly considered and negated by this Tribunal. Moreover, all these issues were again pleaded but not accepted by the Hon'ble Delhi High Court. Meaning thereby, all other points would be deemed to have been rejected by the Delhi High Court on the analogy of principle of constructive *res judicata* as envisaged under Explanation IV of Section 11 of The Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC") which postulates that "any matter which might and ought to have been made ground of defence or attack in such former suit, shall be deemed to have been a matter directly and substantially in issue in such suit". Explanation-V further posits that "any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused".

10. The learned counsel for applicants has contended with some amount of vehemence that there was no direct evidence of demand and acceptance of bribe money by the applicants, specially when DW-1 and DW-2 have specifically denied this fact. The argument is that although it was a case of no evidence, but still the IO has concluded that charges against the applicants stand proved. The DA as well as AA have wrongly placed reliance on the statements of PWs and ignored the defence evidence, which has caused a great prejudice to

their cases. Thus, the impugned orders were stated to be arbitrary and illegal.

11. On the contrary, the learned counsel for respondents vehemently urged that action taken by the respondents is perfectly in accordance with the D.P. Rules and the principles of natural justice were duly observed at every stage of the inquiry proceedings. The argument is that there was sufficient oral as well as documentary evidence on record to prove the charges against the applicants.

12. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the considered opinion that there is no merit in the contention raised on behalf of the applicants and the present O.A. deserves to be dismissed for the reasons mentioned hereinbelow.

13. Now taking into consideration the import of judgment of Delhi High Court and the position on record, the short and significant question, that arises for determination in this case, is as to whether there was sufficient evidence before the Inquiry Officer (IO) to come to the conclusion that charges served upon the applicants were proved or not?

14. Having regards to the rival contentions of the learned counsel for the parties, the answer must obviously be in the affirmative.

15. As is evident from the record, the charge against the applicants was not only that they took Rs. 10000/- as a bribe but specific allegations were assigned to them that all the charged officials (COs) including the applicants conspired together along with two informers, namely, Guddu and Pappu. To execute their conspiracy, they brought complainant Shri Mohd. Shaid and his employee Banwari Lal at P.S. Mandawali. All beat them mercilessly. They took Rs.10000/- as bribe and relieved them in the midnight on 12.01.2003. Even they did not make any DD entry in the *Roznamcha* of PS Mandawali in this regard.

16. A perusal of the record would reveal that during the course of inquiry proceedings, the prosecution has examined PW-1 Constable Rajneesh who has proved the posting of SI Badruddin whereas PW-4 HC Naresh Kumar has proved the posting of applicants and Constbale Kewal Singh at the relevant time in PS Mandawali. Their statements remain unchallenged as the delinquents refused to cross examine them despite opportunity.

17. Sequelly, PW-2 complainant Mohd. Shaid has maintained as under:-

> "This PW stated that he has a Kabari shop in Eastend Apts, New Ashok Nagar for the last 15-16 years. On 11.01.13, at about 9.30 PM S.I. Badruddin, Ct. Kewal Singh, Ct. Rajender Singh and Ct. Som Dutt came to his shop along with police informers Guddu and Pappu and at their instance the said police officials took him and his servant Banwari Lal Rikshaw puller to P.S Mandawali. In the P.S. they interrogated them and in the meantime his real brother Zahid and brother in law Mobin Khan also came there.

> The police officials had suspicion as he was working as a 'Kabari' and that was why they were brought to P.S. and interrogated. After interrogating for 2-3 hours they were allowed to go. Guddu and Pappu had enmity with him and used to make false complaints against him in P.S. and he had strong suspicion that only at their instance they were brought to P.S. On 14-01-2003 he made a complaint regarding this and identified the photocopy of the same which was on file and it was marked as Ex. PW-2/A(1). His statements dt. 4-8-03 whose photocopies are attached were marked Ex. PW-2/B (1, 2, 3).
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> During cross examination the PW, on being asked that on 11-1-03 when they were brought to P.S. and after some time his brother and brother in law came, whether in between this any other person came there HC replied that no person related to him came there. At this point E.O. clarified that in his complaint dated 14-01-03 he had stated that at the instance of informers Guddu and Pappu, S.I. Badruddin and staff brought them to P.S. and gave them beatings and later on allowed to go after paying Rs.10,000/-. The same fact was there in his statement dated 4-8-03 whether the facts narrated were true. To this the P.W. replied that this was true that his brother Zahid paid Rs.10,000/- for getting him and his servant released. On being asked that he had stated in his above statement that Guddu and Pappu, informers used to make false complaints in P.S. against him and because of them he had made that false complaint. The P.W. replied that due to the excesses of S.I. Badruddin he made complaint on 14-01-03 and gave subsequent statements."

18. The next is to note the testimony of PW-3 Mobin Khan, brother-in-law & PW-5 Zahid, brother, of the complainant and PW-6 Banwari Lal, who was also brought along with the complainant by the applicants. Instead of reproducing their statements in toto and in order to avoid the repetition, suffice is to say that they have fully corroborated the statement of complainant PW-2 Mohd. Shaid on all vital counts.

19. As regards Defence Witnesses (DWs) are concerned, DW-I Constable Rakesh has only proved the DD entries with regard to departure and arrival of SI Badruddin who is not applicant in the present OA. The statements of DW-2 Tahir Ameen and DW-3 Amna Khatoon are to the effect that on

receipt of information they went to PS Mandawali and met SI Badruddin with staff and found Mohd. Shaid there in the PS. They requested the SI Badruddin to release Mohd. Shaid and after sometime they got Mohd. Shaid released and got him with them. No beating was given to Mohd. Shaid and he was released after interrogation.

20. No doubt, DW-2 and DW-3 have tried to conceal the facts and stated that neither any beating was given to the complainant and his companion nor any amount was demanded by the Charged Officials. At the same time, they have categorically admitted that complainant Mohd. Shaid was taken to PS by the applicants and other Police Constables at the instance of SI Badruddin and were interrogated. They got them released.

21. It is not a matter of dispute that applicants were posted and present in the Police Station at the relevant time. Even DW-2 and DW-3 have corroborated the charge of bringing the victim to the PS, interrogation by the applicants and then releasing them without recording any DD entry in the *Roznamcha* of the concerned PS. Meaning thereby, DW-2 and DW-3 have also corroborated the statements of PWs as regards the detention and interrogation of the complainant and his companion by the Police Officer concerned.

22. Therefore, if the compendium of the evidence of the parties produced during the inquiry is put together then the

conclusion is inescapable that charges framed against the delinquents during the course of inquiry. The IO has appreciated, evaluated the evidence of the parties in the right perspective and discussed the evidence produced by the parties in detail. Thereafter, he came to the definite conclusion that the charges are proved. The contention of learned counsel for applicants that IO was not competent to cross-examine the witness has no force. Such clarificatory questions to clear the ambiguities by IO are legally permissible, as envisaged under Rule 16(v) of the D.P. Rules, which, inter alia, postulates that the IO shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test its veracity. Such statement shall be read over to the accused officers and he will be allowed to take notes.

23. Further, it is now well settled principle of law that 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 sufficient to ignore the entire cogent evidence produced on record by the prosecution. Above all, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. This matter is no more *res integra*.

24. 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 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.
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> 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".

25. Similarly, 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, it was 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."

26. As indicated hereinabove, the IO, DA and AA have examined the matter in the right perspective and recorded cogent reasons dealing with the relevant evidence of the parties in the right perspective and provided adequate opportunities at appropriate stages to the applicants. We do not find any illegality, irregularity or any perversity in the impugned orders. As such, no interference is warranted by this Tribunal in the obtaining circumstances of the case.

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

28. In the light of the aforesaid reason, we find that there is no merit in the OA and it deserves to be and is hereby dismissed, as such. No costs.

**(V.N. GAUR)**
**MEMBER (A)**

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

**Rakesh**