CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 195/2013

Reserved on 12.09.2018
Pronounced on 17.09.2018

Hon'ble Mr. K.N.Shrivastava, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

HC Tuki Ram, Age-49 years,
PIS No. 28822006,
S/o Late Sh. Babu Ram
C-166, Shaheed Nagar,
PO- Chikamburpur, Ghaziabad(UP). …. Applicant

(By Advocate : Mr. Sachin Chauhan)

VERSUS

1. Govt. of NCTD through the
Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

2. The Joint Commissioner of Police,
South-Eastern Range through
Commissioner of Police, PHQ,
I.P. Estate, New Delhi.

3. The Dy. Commissioner of Police,
North-East District through
Commissioner of Police, PHQ,
I.P. Estate, New Delhi. … Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

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

Heard Shri Sachin Chauhan, counsel for applicant and Mrs. Sumedha Sharma, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

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

"(i) To set aside the impugned order dated 30.3.12 whereby the major punishment i.e. forfeiture of one year approved

service permanently entailing proportionate reduction in his pay from Rs.12550/- to Rs.12,180/- with immediate effect is imposed upon the applicant at A-1 and order dated 17.12.12 whereby the appeal of the applicant is rejected by the Appellate Authority thus causing great prejudice to the applicant at A-2 and to further direct the respondents that the forfeited years of service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.

(ii) To set aside the finding of enquiry officer A-3.

(iii) To set aside the order of initiation of D.E. dated 21.6.11 Or/ and

(iv) Any other relief which this Hon'ble Court deems fit and proper may also awarded to the applicant."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant vide order dated 21.06.2011 for the following summary of allegation.

> "It is alleged against you HC Tuki Ram No. 1849/NE that while you were posted in PS Nand Nagri on 22/2/11 a public person namely Sh. Subash Chand Sharma made a PCR call that two cycles thieves aged approximately 25/26 years were apprehended by him. The call was marked to you HC Tuki Ram No. 1849/NE for taking necessary action by Duty Officer vide DD No. 21A dt 22/2/11 PS Nand Nagri. On this call, PCR van arrived and both the cycle thieves were handed over to the staff of PCR van by Sh. Subash Chand Sharma.The PCR van handed over both the thieves to Duty Officer W/ASI Kusum Lata of PS Nand Nagari, who let them sit in Sankaramna Kaksha along with other three person who were to be dealt by you HC Tuki Ram and informed you by telephone.
>
> You HC Tuki Ram let both the cycle thieves ran away from your custody and did not mention about it in the Daily Dairy No. 71B dt 22/2/11 of your arrival and also did not inform SHO/Nand Nagari which is lapse on your part."

Along with the summary of allegation, as per the procedural rules, list of witnesses and list of documents were served on the applicant. An Inquiry Officer was appointed. Complying with the principle of natural justice and the procedural rules, enquiry was conducted by the Inquiry

Officer. The Inquiry Officer submitted his report holding that the charge leveled against the applicant is proved. The above said entire material along with the representation of the applicant was considered by the disciplinary authority and vide order dated 30.03.2012, the disciplinary authority imposed the penalty of forfeiture of one year of approved service permanently entailing proportionate reduction in his pay from Rs.12250/-(Rs.9750/-+Grade Pay Rs.2800/-) to Rs. 12180/-(Rs.9380/-+ Grade Pay Rs.2800/-) with immediate effect. Appeal filed by the applicant was also dismissed by the appellate authority vide order dated 17.12.2012.

4. The counsel for the applicant submitted that it is a case of no evidence. He vehemently submitted that the applicant was on emergency duty and he came back to Police Station at 11PM on 22.02.2011. To substantiate his submission, he took us through the evidence of PW-1 to PW-3 and two defence witnesses. From the perusal of the deposition of the witnesses which are part of the enquiry report, it is clear that in the cross examination of PW-3 W/ASI Kusam Lata it is elicited by the applicant to the effect that the applicant had come to Police Station in between and at that time she informed him about the thieves and for that the applicant told her that "let them sit there" in the Police Station. From the perusal of the deposition of even the defence witnesses it is clear that the applicant was informed regarding the arrest of the thieves by telephonic message. This evidence clearly establishes that it is not a case of no evidence as submitted by the counsel for the applicant.

5. The counsel for the applicant further submitted that on one hand the charge leveled against the applicant was not proved but on the other hand, the enquiry officer has considered altogether a different allegation and concluded that that different allegation is established. He has drawn our attention to some portion of the concluding part of the enquiry report. However, from the perusal of said portion, it is clear that those portions are only inferences based on deposition of the witnesses recorded in the said enquiry, as such, in our opinion no charge or allegation other than the charge leveled against the applicant is established in the enquiry report. The counsel for the applicant further submitted that the inquiry officer has ignored the deposition of the defence witnesses. We have gone through the depositions of all the witnesses. We have seen the deposition of the defence witnesses as well. We are of the opinion that the deposition of the defence witnesses is read in the context of the deposition available of all the witnesses and the deposition of the defence witnesses is not ignored.

6. The counsel for applicant has further submitted that the penalty order as well as the appellate order are not speaking orders. In our opinion the appellate order and penalty order are reasoned orders. The disciplinary authority has taken into account the deposition of witnesses in para 5 of his order and he has also heard the applicant in orderly room and thereafter he has passed the reasoned order. The relevant portion is extracted below:-

> "During the departmental enquiry, 03 PWs were examined by the Enquiry Officer and due opportunity was given to the delinquent to cross-examine them. After examining all the PWs the Enquiry Officer prepared the charge against the delinquent. The same was got approved from the

> Disciplinary Authority on 21.10.2011 and served upon HC Tuki Ram, No. 1849/NE (PIS No. 28822006) on 10.12.2011. The delinquent has asked to furnish the list of DWs. He has submitted 02 DWs. The Enquiry Officer were examined all DWs. The delinquent did not admit the charge and submitted his defence statement to the Enquiry Officer on 09.01.2012.
>
> The Enquiry Officer carefully gone through the evidence on record, deposition made by the prosecution witnesses, defence witnesses, defence statement and exhibits. Taking all the point into the consideration, the Enquiry Officer submitted his findings to Disciplinary Authority with the conclusion that the allegation against the erring HC Tuki Ram, No. 1849/NE (PIS No. 28822006) is fully proved beyond any iota of doubt.
>
> Tentatively agreeing with the Enquiry Officer the findings was served upon the delinquent HC Tuki Ram, No. 1849/NE (PIS No. 28822006) on 02.03.12 vide this office U.O. No. 2240/HAP/NE (P-II) dated 02.03.2012 with the direction to file his representation, if any, against the findings of the Enquiry Officer to the Disciplinary Authority within 15 days from the date of receipt failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex-pare on its merits. The delinquent submitted his representation on 16.03.2012.
>
> I have heard HC Tuki Ram, No. 1849/NE (PIS No.28822006) in Orderly Room on 28.03.2012 and also perused the representation. I have gone through the findings along with the evidence on record, deposition made by the prosecution witnesses, defence witnesses, defence statement and exhibits. At the time of personal hearing, the delinquent has nothing to say more than what he has already said in his representation, which was not found satisfactory. The conduct of defaulter is serious dereliction of duty. It reflects misconduct, indiscipline and insubordination……..”

The appellate order is also reasoned order and the appellate authority also heard the applicant in orderly room before passing the appellate order rejecting the appeal. The applicant in support of his submissions relied upon the following judgments/orders.

(1) **Kranti Associates Private Limited and Another** Vs. **Masood Ahmed Khan and Others** (2010) 9 SCC 496)

(2) **Roop Singh Negi** Vs. **Punjab National Bank and Others** (2009) 2 SCC 570)

(3) **GNCT of Delhi and Ors** Vs. **ASI Rambir Singh and Anr**. W.P (C) 7680/2010)

(4) **Head Constable Munshi Ram** Vs. **Govt. of NCTD and Ors**. (CAT (PB) OA No.271/2009)

(5) **Shri Inder Singh** Vs. **Commissioner of Police & Ors**.(CAT (PB) OA 1926/2009)

(6) **Rajavelu Simon** Vs. **AIIMS and Ors** (CAT (PB) OA No. 4257/2010)

7. In view of the facts available in the present case, the law laid down by the Hon'ble Supreme Court in the above said cases is not applicable and the observations made in other judgments are also not applicable. Indeed 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:-

"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 this case and in view of the law laid down by the Hon'ble Supreme Court, referred to above, and in view of the fact that the applicant has not brought to our notice violation of any procedural rules or violation of principles of natural justice, no case is made out for interference with the impugned order. Accordingly, the OA is dismissed. No costs.

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

'sk'