

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2851/2012

Reserved on 27.09.2018
Pronounced on 04.10.2018

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

Saroj
W/o Sh. Bhagirath Kumar,
R/o-1069, Diwan Complex,
Jain Colony, Johripur,
Delhi-94. Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. The Govt. of NCT of Delhi through
Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.
2. The Special Commissioner of Police,
Armed Police,
Police Headquarters, I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police,
3rd Btn DAP, Vikaspuri,
New Delhi. Respondents

(By Advocate: Ms. Neetu Mishra for Mrs. Rashmi Chopra)

ORDER

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

We have heard Mr. Ajesh Luthra, counsel for applicant and Ms. Neetu Mishra for Mrs. Rashmi Chopra, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

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

- “(i). Quash and set aside order dated 28.4.2011 Passed by Respondent No.3 and order dated 8/30.11.2011 passed by respondent no.2.
- (ii). Quash and set aside findings submitted by the Enquiry Officer.
- (iii). To direct the respondents to grant the applicant all consequential benefits.
- (iv). Cost of proceedings may also be awarded to the applicant.
- (v). Any other relief which this Hon’ble Tribunal may deem fit and proper may also be passed in favour of the applicant.”

3. The relevant facts of the case are that on the summary of allegation that the applicant alongwith her husband was involved in a quarrel with her neighbour and in the said quarrel she alongwith her husband lifted stones and stick bats and hurled on the said neighbour, namely, Hari Kishan Verma and his wife Smt. Mithlesh. As a consequence both of them sustained injuries over their heads and Smt. Mithlesh became unconscious and ultimately the said Smt. Mithlesh succumbed to the said injury. The summary of allegation is extracted below:

“It is alleged against W/Constable Saroj No. 7486/DAP while residing H.No.1019, Diwan Complex, Johripur, Delhi. On 10.06.06 at about 9AM your husband Bhagirath Kumar Anand had closed the valve of water tap of house of Hari Kishan Verma. When he asked regarding close of valve of water tap, you along with your husband started abusing him. When he objected on your misbehaviour, you & your husband lifted stones and stick bats and hurling it on Hari Kishan Verma and his wife Smt. Mithlesh. And both of them have sustained injuries over their heads and other parts. Smt. Mithlesh became unconscious at the spot and they were removed GTB hospital for treatment by police and the case FIR No. 400/06 u/s 308/34 IPC, P.S. Gopal Puri, Delhi was registered against you on 12.06.067. Smt. Mithlesh met her death in GTB hospital and offence section 302 IPC was added to the case. W/Const. Saroj No. 7486/DAP was arrested in the above said criminal case on 12.06.2006.

On having been involved in Crl.Case registered vide FIR No. 400/06 u/s 308/302/34 IPC, P.S. Gokal Puri, Delhi and arrested in the aforesaid case on 12.06.2006, W/Const. Saroj No. 7833/DAP was placed under suspension w.e.f 12.06.2006 vide order No. 1212-1230/HAP/VI Bn., DAP dated 21.06.2006. Later on, she was re-instated from suspension without prejudice to the criminal case proceedings pending against her vide order No. 1750-67/HAP/VI Bn. DAP dated 12.09.2006.

The Hon'ble Court of Dr.R.K.Yadav, Distt. Judge-VII cum ASJ, Kakardooma Courts, Delhi vide its judgment dated 10.02.2009 delivered in the above mentioned criminal case has acquitted the accused persons for want of evidence, as the prosecution miserably failed to prove its charge. On perusal of the judgment dated 12.02.09 revealed that the witnesses have been won over as rightly observed by the trial Court. The star witnesses did not support the prosecution and turned hostile. Therefore, for want of evidence, the accused persons were acquitted of the charge. Thus in view of rule-12 of D.P. (P&A) Rules, 1980, there is sufficient material/reasons available to initiate a regular D.E. against W/Ct. Saroj No. 7833/DAP.

The above said act on the part of you W/Ct. Saroj No. 7486/DAP amounts to gross misconduct, carelessness & dereliction in discharge of her official duty by involved herself in the above criminal case which render her liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980.”

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant. Subsequently, an Inquiry Officer was appointed. As per the procedural rules and following the principles of natural justice, the Inquiry Officer conducted the enquiry in which he has examined 7PWs and 2 DWs. The Inquiry Officer considered and discussed the evidence on record and also taken into account all the points raised by the applicant in her defence statement and came to the conclusion that the charges levelled against the applicant were proved vide his inquiry report dated 18.03.2011, which is available at pages 17 to 31 of the paper book. The relevant portion of the Enquiry Report is extracted below:

.....Prosecution evidence, charge and defence statement have been examined at large. The I.O. of the case PW-2 SI Asha Ram, then ASI, had reached the spot and found that the injured have been shirted to hospital, so he reached hospital and found the injured there. He got the MLC's of both injured. The complainant Hari Kishan Verma was mentioned as fit for statement by the doctor while Smt. Mithlesh Verma was not fit for statement. He immediately without the loss of time recorded the statement of Hari Kishan Verma (now deceased). In his statement Hari Kishan Verma alleged that the delinquent and her husband had hurled bricks and stones on them thereby causing injuries to him and his wife. There was no time to Hari Kishan Verma that he would have been tutored by someone else to frame the delinquent and her husband. Moreover at that time there was no reason to lie before the I.O to frame the delinquent falsely. The delinquent nowhere proved/suggested that there were certain reasons to frame her falsely by the complainant or I.O. The I.O recorded the statement of complainant Hari Kishan Verma without any loss of time and recorded truly what the complainant and other witnesses had deposed before him. The delinquent never raised the point any time before the trial that the I.O had falsely framed her or recorded the statement of witnesses falsely nor any witness had raised this point at any time. It means the statements of complainant and witnesses were recorded truly by the I.O. The complainant had signed his statement and a copy of FIR was had been handed over to the complainant by the I.O., even though the complainant had never raised this point at any time before trial of the case till he servived before any forum that his statement has been recorded falsely. It means the I.O made no mistake in arresting the accused persons and filling the charge sheet against them. It may be quite possible that the delinquent and her husband had enough time to win over the complainant and other witnesses before the trial of the case. PW-7 Inspector Bakshi Ram had rightly deposed that the witnesses have been won over by the delinquent and her husband. In such type of cases/departmental enquiries it is difficult to find direct evidence and witnesses to prove that the witnesses have been won over by the delinquent and her husband but the circumstantial evidences are enough to prove it. In this case also the circumstantial evidences are enough to prove that the statements of witnesses were recorded truly by the I.O and on the basis of that the I.O arrested the accused persons and filed the charge sheet against them. It was the afterthought of witnesses that they turned hostile during trial and this could only happen when they are won over by the interested persons i.e. accused persons namely Saroj and her husband.

From the prosecution evidences, charge, defence evidences, defence statement discussed in the para above, the charges against the delinquent stands proved."

5. The disciplinary authority carefully considered the enquiry report and the written representation filed by the applicant against the enquiry report and also heard the applicant in orderly room on 26.04.2011. The disciplinary authority also considered the submissions made by the applicant as well as he has discussed the depositions of some of the witnesses and passed a penalty order of forfeiture of 10 years approved service permanently with proportionate reduction on the applicant vide order dated 28.04.2011. The relevant portion of the order is extracted below:

"Tentatively agreeing with the findings of the E.O., a copy of the findings was served upon the defaulter W/Constable vide this office U.O letter No. 9309/HAP/(P-II)/111 Bn. DAP dated 31.03.2011 for her written representation against the findings of the E.O. The delinquent W/Constable received the copy of findings on 06.04.2011. She submitted her reply on 25/04/2011. I have carefully gone through the entire DE file, findings of E.O as well as representation submitted by the defaulter Woman Constable against the findings of the E.O. She was also heard in O.R. on 26.04.2011. During O.R. she stated that at the time of incident she has pregnant and went to 4th floor of her house to give tea to labour, who were doing construction work. She further said that second party consists of eight (08) persons and her party consists of herself and her husband. She said that her husband was beaten by them and deceased was fell down on stairs in her (deceased) house toward backside, so deceased got injuries.....

"Moreover, the PW-6 clearly stated that the post-mortem, of Smt. Mithlesh Verma w/o Shri Hari Kishan Verma was got done by him as investigation was handed over to him on 13.06.2006. It is clear that the incident took place on 10.06.2006 and the injured lady expired on 12.06.2006 after the incident of quarrel. The Enquiry Officer has proved the charge against the defaulter Women Constable after examining/evaluating depositions of PWs, DWs as well as defence statement of defaulter Women Constable."

Keeping in view the overall facts and circumstances of the case and after having carefully gone through DE file, representation of defaulter Women Constable as well as other relevant record on file, I Brahm Singh, Deputy Commissioner of Police, 111 Bn.DAP, Delhi hereby award the punishment of forfeiture of 10(ten) approved service3 permanently to Woman Constable Saroj, No. 7833/DAP with proportionate reduction in her pay. Her suspension period from 12.06.2006 to 11.09.2006 is also decided as period "not spent on duty" for all intents and purposes."

The appeal filed by the applicant was rejected by the appellate authority by a speaking order after considering his appeal by hearing him in orderly room vide order dated 08.11.2011. The relevant portion of the Enquiry Report is extracted below:

"The appellant in her appeal has mainly pleaded that (i) the punishment order is defective, arbitrary and non speaking, (ii) she has been punished merely on suspicion or conjecture, (iii) punishment is too harsh disproportionate and severe, without being at fault, (iv) the EO has framed the charge on the extraneous material and findings are based on presumptions, (v) the EO has mentioned that PWs have been won over as the star witness did not support prosecution and turned hostile, which proved that EO has not reached at the concrete result of the facts mentioned in the judgment by the Hon'ble Judge, (vi) DE proceedings against the appellant is contrary to the provisions of rule 12 of Delhi Police (Punishment & Appeal) Rules-1980. The appellant has been acquitted in the criminal case purely on merits and grounds of acquittal are not covered under rule 12 of Delhi Police (P&A) Rules-1980 (vii) PW-1 Mukesh Jain and PW-5 Ram Kishore have not supported the prosecution and IO's of PS Gokal Puri made perfunctory allegations. The Hon'ble ASJ acquitted her in the above mentioned case, (viii) None of PWs examined during DE proceedings, had deposed against her and as such the charge was liable to be dropped, (ix) DWs proved that appellant was not present at home at the time of incident. They also stated that Smt. Mithlesh slipped from stairs and fell down, (x) statement recorded by the IO u/s 161 Cr.PC are not valid as per court judgment in AIR 1969 SC 983 in the matter of CBI Vs PC Jain and rule-15 of Delhi Police (P&A) Rules-1980, (xi) the appellant has tendered more than 14 years of service with clean record, (xv) the appellant has requested to set-aside the punishment.

I have carefully gone through the appeal, impugned order dated 28.04.2011 and all the relevant material on record. The contentions of the appellant are devoid of merit. The disciplinary authority has awarded the punishment after going through the defence statement/representation of the appellant and other evidence on record and the punishment awarded by the disciplinary authority is justified as she along with her husband pelted bricks and stones at Sh. Hari Kishan and his wife Smt. Mithlesh Verma, which resulted in head injuries to Smt. Mithlesh Verma (wife of complainant), who later succumbed to her injuries. From the evidence, it has been established that cross cases were registered, i.e. FIR No. 399/06 u/s 452/323/506/34 IPC PS Gokal Puri on the complaint of appellant and FIR No. 400/06 u/s 308/34 IPC PS Gokal Puri was registered on the complaint of Shri Hari Kishan Verma. In case FIR No. 399/06, appellant herself reported that 2nd party entered in her house and abused/beaten her and her husband Whereas in FIR No.400/06, complainant Shri Hari Kishan Verma reported that appellant and her husband pelted bricks and stones, which resulted in head injuries to his wife Smt. Mithlesh Verma who later succumbed to her injuries on 12.06.2006. During DE proceedings, PW-2 SI Asha Ram (I.O of the case) deposed that the statement of Shri Hari Kishan Verma, complainant was recorded without any delay as injured Smt. Mithlesh Verma was unfit for statement and she was under observation. The I.O. recorded what the complainant and other witnesses had deposed before him and on the basis of these statements, he arrested the accused and filed the charge sheet against the appellant. The EO has conducted the enquiry within the ambit of rules as enumerated in the Delhi Police (Punishment & Appeal) Rules, 1980. The EO has framed and proved the charge against the appellant on the basis of documentary evidence adduced during the DE proceedings. Dr. R.K.Yadav Distt. Judge-VII cum ASJ, Karkardoom Courts, Delhi vide his judgment dated 10.02.2009 clearly mentioned that the appellant was acquitted from the charge for want of evidence as the prosecution miserably failed to prove its charge. Sh. Hari Kishan Verma, the star witness has expired and his son Anuj Verma, including Ram Kishore, neighbour did not support the prosecution, turned hostile and were apparently won over. The court ruling cited has no direct bearing on this case.

I have also heard the appellant in O.R. on 04.11.2011. During O.R. she pleaded that no such incident took place. This plea of the appellant does not appear correct. I see no reason to interfere with the punishment order. Hence, appeal is rejected."

6. The counsel for the applicant submitted that the alleged incident of quarrel and consequent death has nothing to do with the discharge of official duty, as such in view of the judgment of Hon'ble High Court passed on 23.04.2014 in W.P (C) 14126/2004, titled **Sanjay Kumar Vs. UOI & Ors**, departmental enquiry should not have been held against the applicant. However, in our opinion, the observations made in the above said judgment are based on the peculiar facts available in that case and are not applicable in the instant case.

7. The counsel for the applicant further vehemently and strenuously submitted that on the same set of facts, a criminal case was registered and acquittal order was passed by the Court of Dr. R.K.Yadav, District Judge-VII/North East-Cum-Additional Session Judge in S.C. No. 73/08, titled **1. Bhagirath Kumar Anand S/o Sh. Jetha Ram, R/o H.No.1019, Diwan Complex, Johripur, Delhi. 2. Saroj W/o Bhagirath Kumar Anand S/o Sh. Jetha Ram, R/o H.No.1019, Diwan Complex, Johripur, Delhi** vide order dated 10.02.2009 on the basis that there is no evidence. As such he submitted that in view of the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, departmental enquiry could not have been held and that the entire departmental enquiry in this case is required to be set aside.

8. Per-contra, the counsel for the respondents took us through the said judgment of acquittal dated 10.02.2009. She submitted that the said acquittal is not on merit. The acquittal is for want of evidence as all the prosecution witnesses turned hostile because of extraneous consideration. She further took us through the depositions in the

departmental enquiry wherein it has come on record to the effect that there was a compromised between the applicant and the complainant party in the said criminal case. In view of the fact that the said acquittal is not on merit, the submissions of the learned counsel for the applicant that there is violation of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 is not substantiated. The relevant portion of the said judgment is extracted below:

"10. When Hari Kishan Verma, the star witness of prosecution has expired and Anuj Verma his son, including Ram Kishore their neighbour did not support the case of prosecution and turned hostile, Ld. Prosecutor rightly opted to close prosecution evidence, without examining remaining formal witnesses in the case. It seems that for extraneous considerations, witnesses namely, Anuj and Ram Kishore exonerated accused persons. Consequently, prosecution has miserably failed to prove its case against the accused persons. For want of evidence, accused persons are acquitted of the charge. Their bail bonds are discharged. File be consigned to Record Room."

9. The counsel for the applicant further submitted that inquiry report and the orders of the disciplinary authority and the appellate authority are not reasoned orders and they are passed without application of mind. As such there is violation of the provisions of Section 22 of the Delhi Police Act, 1978. The relevant portions of the inquiry report, disciplinary authority order and the appellate order have been extracted above. From the perusal of all those impugned inquiry report and orders, it is clear that they are reasoned and speaking orders. As such in our opinion there is no violation of the provisions of Section 22 of the Delhi Police Act, 1978.

10. 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. Khadabazar 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."

11. 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 the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice,

except above referred Section 22 of the Delhi Police Act, 1978 and Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, the OA is devoid of merit.

12. Accordingly, OA is dismissed. No order as to costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

'sk'