CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1601/2013

Reserved on 19.09.2018
Pronounced on 25.09.2018

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

SI Mohd. Razak, S I No.4860-D
PIS No. 28750611, Age-57 years,
S/o Late Mohd Amin,
R/o Q.No.55/E, Police Colony,
Model Town-IInd, Delhi-9. … Applicant

(By Advocate: Mr.Sachin Chauhan)

VERSUS

1. Govt. of NCTD through the
Commissioner of Police,
Police Headquarters, IP Estate,
M.S.O. Building, New Delhi.

2. Joint Commissioner of Police,
South- Eastern Range,
Police Headquarters, IP Estate,
M.S.O. Building, New Delhi.

3. The Dy. Commissioner of Police,
North-East Distt. Delhi,
Police Headquarters, IP Estate,
M.S.O. Building, New Delhi. … Respondents

(By Advocate: Mr. Amit Anand)

O R D E R

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

We have heard Shri Sachin Chauhan, counsel for applicant and Mr. Amit Anand, counsel for respondents, perused the pleadings and all the documents produced by both the counsel.

2. The applicant has prayed for the following reliefs:

"(i) To quash and set aside order 23.02.2012 whereby punishment of forfeiture of 1 year approved service permanently entailing proportionate reduction in his pay was imposed upon the applicant and order dated 06.12.2013 whereby the statutory appeal of the applicant is rejected by the Appellate Authority and to further direct the respondents to restore the forfeited years of service of the applicant as it was never inflicted with all consequential benefit including seniority & promotion and pay and allowance.

(ii) To set aside the findings of the Enquiry Officer.

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

3. The relevant facts of the case are that proposing to hold a departmental enquiry, a summary of allegation, list of witnesses and list of documents were served on the applicant. Thereafter following the relevant procedural rules, departmental enquiry was held wagainst the applicant on the following summary of allegation.

> "It is alleged against you SI Mohd. Raziq No. 4860-D, PIS No.28750611 that while posted at PS G.T.B. Enclave, Delhi. On 27-4-2011 at 1956 hrs a PCR call received vide D.D.No.79-B P.S. G.T.B.Enclave. The said PCR call was entrusted to you for necessary action. The said PCR call was a self call from HC Brijesh No.851/PCR, I/C Baker-15. The call relates to reporting by one Ankit Gupta s/o Bal Ram Gupta r/o Distt. Unnav,U.P. that 4/5 pick pockets have taken out mobile from his pocket in DTC bus near light point GTB hospital. On this information, PCR staff apprehended five boys namely (1) Mahender s/o Bhagwati, (2) Kishor s/o Braham Parkash, (3) Kishan s/o Mahesh, (4) Gaurav s/o Sunil and (5) Chintamani s/o Pappu r/o G-57, jhuggi sunder nagri, Delhi with the help of public and recovered the said mobile phone and handed over five alleged and complainant to you. You mentioned in arrival report vide D.D.No. 5-B dated 28-4-2011 that PCR apprehended five boys (1) Mahender s/o Bhagwati age-16 years, (2) Kishor s/o Braham Parkash age-17 years, (3) Kishan s/o Mahesh Age-17 years, (4) Gaurav s/o Sunil age-17-1/2 years and (5) Chintamani s/o Pappu age-17-1/2 years and all were minors. You further mentioned that complainant Ankit Gupa s/o Bal Ram Gupta r/o Village Karhgara, P.S. Fateh Pur Chaurashi, Distt. Unnav, U.P.received back his mobile and he do not require any legal action in the matter. You further mentioned in Daily

> Dairy that as all the alleged pick pockets were juvenile so you allowed them to leave with their parents.
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> However, P.S.Nand Nagri record indicates that alleged Mahender s/o Bhagwati Parshad, caught by PCR was not a juvenile and was earlier arrested in an attempt to murder and other snatching case. You did not take any legal action and filed the call vide D.D. No.5-B dated 28.04.2011 without proper verification of fact.
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> The above act on the part of you SI Mohd.Raziq No. 4860-D, PIS No. 28750611 amounts to grave misconduct, negligence, carelessness and dereliction in the discharge of your official duties without renders you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal), Rules, 1980."

4. An Inquiry Officer was appointed. The Inquiry Officer after examining 7PWs, discussed the entire evidence including the evidence of PW-4 and PW-5, the material witnesses and the records produced before him and held that the applicant wrongly came to the conclusion that all the five alleged pick-pocketers were minors, the Inquiry Officer further held that the applicant did not bother to check the criminal records of the alleged pick-pocketers and that as per the records one of the pick-pocketer Mahender S/o Bhagwati Prasad was not minor and his criminal records were available in the register no.9, part-III of PS Nand Nagri as he was earlier arrested in an attempt to murder and other snatching cases and that the applicant should have brought this fact to the knowledge of the senior officer and should have taken proper legal action. Thus, on the basis of the evidence available, the Inquiry Officer concluded that the charge levelled against the applicant was proved. The enquiry report was furnished to the applicant and he has submitted his representation.

5. The disciplinary authority going through the entire material on record, inquiry report and the representation made by the applicant

against the same and hearing the applicant in person in orderly room recording his reasons imposed a penalty of forfeiture of one year approved service permanently entailing proportionate reduction in his pay from 16910/- (Ra.12710/-+ Grade Pay Rs.4200/-) to Rs.16410/- (Rs.12210/-+ Grade Pay Rs.4200/-) with immediate effect by his impugned order dated 23.02.2012. The appeal filed by the applicant was dismissed by the appellate authority by reasoned and speaking order after hearing the applicant in orderly room.

6. The counsel for the applicant vehemently submitted that this is a case of no evidence and he has also submitted that the impugned orders are not speaking orders. In our opinion, as discussed above, there is sufficient evidence before the inquiry officer to hold that the charge was proved and the impugned orders are speaking orders. 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:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
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> 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;
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> 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."

7. In view of the fact of the 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 no procedural lapses were brought to our notice by the counsel for the applicant, the OA is devoid of merit.

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

(S.N.Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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