**CENTRAL ADMINISTRATIVE TRIBUNAL**
**PRINCIPAL BENCH**

OA No. 1156/2013

Reserved on 24.10.2018
Pronounced on 02.11.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)**
**Hon'ble Mr. S.N.Terdal, Member (J)**

Const. (Exe.) Baljeet Singh, Age 43 years,
No. 1103/OD (PIS No. 28882307)
S/o Sh. Ram Krishan
R/o Village & Post Office Purkhasi,
Distt. Sonipat, Haryana. … Applicant

(By Advocate : Mr.Sachin Chauhan )

**VERSUS**

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

2. The Joint Commissioner of Police
(Northern Range),
Through Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.

3. The Addl. Deputy Commissioner of Police,
(Outer Dist.),
through Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.

4. The Addl. Commissioner of Police,
Vigilance,
Through Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi. … Respondents

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

**O R D E R**

**Mr. S.N.Terdal, Member (J)**:

Heard Mr. Sachin Chauhan, counsel for applicant and Ms. Neetu Mishra for Mrs. Rashmi Chpopra, 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 10.3.11 whereby the major punishment of forfeiture of one year approved service permanently is inflicted upon the applicant at A-1, order dated 17.9.12 whereby the appeal of the applicant has been rejected 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.
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> (ii) To set aside the finding of enquiry officer.
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> (iii) To further direct the respondents to remove the name of the applicant from secret list of doubtful integrity from the date of inception.
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> Or/and
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> (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 on 13.08.2009 on the allegation that without any reason he mercilessly beaten Shri Sohan Lal s/o Shri Tika Ram and Shri Rajender S/o Sh. Puranwasi Yadav and thereby damaged to the image of the police force. The summary of allegation is extracted below:

> "It is alleged against HC (Exe.) Anil Kumar No.223/OD and Ct. (Exe.) Baljeet Singh No. 1103/OD that while they were posted at PS Shahbad Dairy, a PCR call about setting ablaze a girl at 45, Sec.5 Bawana Industrial Area was received vide DD No. 30-A dated 3.06.2009 and the same entrusted to HC Anil Kumar No.223/OD for necessary action. HC Anil Kumar No. 223/OD asked beat constable

Baljeet Singh No. 1103/OD to reach the spot. Instead of going to the spot, Ct. Baljeet Singh No. 1103/OD along with Ct.Charan Singh went to a nearby ice factory at L-42, Sec.-5 DSIDC. On reaching there, Ct.Charan Singh No.1103/OD started beating Shri Sohan Lal s/o Shri Tika Ram R/o M-29, Krishan Vihar Delhi (Driver of owner of that factory) without any reason. The machine operator of the factory Sh. Rajender s/o Puranwasi Yadav r/o village Kadipur Gazipur (UP) tried to inform the factory owner but Ct. Baljeet Singh did not allow him and also beat him. HC Anil Kumar No. 223/OD did not take any action against while Ct.Baljeet Singh No.1103/OD was beating them despite the fact that the call was entrusted to him and he was responsible to attend the call. The beating of one of the victim namely Sh. Rajender in evident from the CD prepared from the CCTV. The victims had not committed any offence by informing the police about an incident. They deserve to be encouraged for providing the information to the police but they were beaten mercilessly. Such incidents cause damage to the reputation/image of the police force and bring a bad name. Besides, HC Anil Kumar No. 223/OD did not make any effort to trace the burnt girl as to who had taken her to hospital and whether she is alive or dead till receipt of information through Duty Constable LNJPN Hospital, Delhi vide DD No. 55-B dated 04.06.2009 PS Shahbad Dairy. This information was entrusted to ASI Kaptan Singh by SHO/SB. Dairyvide DD No.56-B dated 4.6.2009 who got recorded her statement through Tehsildar/Narela and got a case registered vide FIR No.135/09 dated 5.6.2009 u/s 307 IPC PS Shahbad Dairy.

The above act on the part of HC (Exe.) Anil Kumar No. 223/OD and Ct.(Exe.) Baljeet Singh No. 1103/OD amounts to grave misconduct in the discharge of their official duties and unbecoming of a member of police force which render them liable to dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

4. Along with summary of allegation, list of witnesses and list of documents were served upon the applicant. As he did not plead guilty, an Inquiry Officer (IO) was appointed. The Inquiry Officer following the applicable procedural rules and the principles of natural justice conducted the enquiry and examined 4 PWs and 2DWs and considering the defence statement filed by the applicant. The Inquiry Officer evaluated the evidence before him and after discussing the

evidence of PW-1 to PW-4 and after going through the video footage of the CCTV camera, came to the conclusion that the charge framed against the applicant was proved vide his Enquiry report dated 02.06.2010. The disciplinary authority considered the representation of the applicant and heard him in the orderly room on 10.03.2011 and after discussing the deposition of the witnesses and the grounds raised by the applicant, by a speaking order upheld the Enquiry report and imposed a penalty of forfeiture of one year approved service permanently entailing reduction in his pay from Rs.9710+2400 to Rs.9350+2400 vide his penalty order dated 10.03.2011. The appeal filed by the applicant was considered by the appellate authority and he was also heard in orderly room and the appellate authority also considered the entire material on record and by speaking order dated 17.09.2012 rejected the appeal.

5. The counsel for the applicant vehemently contended that the deposition of the defence witnesses were not considered by the Inquiry Officer and that he has given his finding based exclusively on the evidence of prosecution witnesses.

6. The counsel for the respondents has taken us through the enquiry report. From the perusal of the enquiry report it is crystal clear that there is evidence in the form of deposition of prosecution witnesses and PWs were mercilessly beaten by the applicant. From the evidence it is also clear that the inquiry officer has relied upon the CCTV footage which was produced before him that also clearly evidences that the applicant beaten Shri Sohan Lal s/o Shri Tika Ram and Shri Rajinder S/o Shri Puranwasi Yadav without any reason. The

counsel for the applicant has not shown any deposition to show that the applicant had not beaten Shri Sohan Lal or Sh. Rajender Singh. The counsel for the applicant relied upon the judgment of Hon'ble Andhra Pradeh High Court in **Union of India and Ors**. Vs. **G.Krishna** ( ATJ 2005 (3) 359) and the judgment of this Tribunal in the case of **HC Munshi Ram** Vs. **Govt. of CTD through the Commissioner of Police and Ors**. (OA 271/2009). But, however, in view of there being sufficient evidence produced by the PWs to establish the charge and the deposition of DWs being of no relevance, the Inquiry Officer is justified in not discussing the evidence of the deposition of the DWs. In view of these facts the observations made in the above said judgments are of no avail to the applicant.

7. 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.
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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".

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;
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> 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 the case discussed above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that no procedural lapses or violation of principles of natural justice was urged by the applicant, there is no ground for interference in the impugned orders.

9. Accordingly, the OA is dismissed. No order as to costs.

**( S.N.Terdal)**
**Member (J)**

**( Nita Chowdhury)**
**Member (A)**

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