CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 4331/2012

Reserved on 17.09.2018
Pronounced on 25.09.2018

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

Sh. Sajjan Singh,
S/o Sh. Bhaghwan Singh,
R/o Q.No. 07, New Police Colony,
Shalimar Bagh, New Delhi. … Applicant

(By Advocate: Mr.Ajesh Luthra)

VERSUS

1. The Commissioner of Police
PHQ, MSO Building,
IP Estate, New Delhi.

2. The Joint Commissioner of Police,
South-Western Range, PHQ,
MSO Building, IP Estate,
New Delhi.

3. The Deputy Commissioner of Police,
West District, P.S Rajouri Garden,
Delhi. … Respondents

(By Advocate: Mr. Amit Anand)

O R D E R

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

We have heard Shri Ajesh Luthra, counsel for applicant and Shri Amit Anand, counsel for respondents, perused the pleadings, and all the documents produced by both the parties.

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

"(a) quash and set aside the impugned orders with all consequential benefits

(b) award costs of the proceedings and

(c) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

3. The relevant facts of the case are that a Show Cause Notice (SCN) dated 31.12.2012 was issued to the applicant while working as SHO, Ranholla, Police Station for not taking strict action against one Shri Ravinder, property dealer against whom a complaint was filed by one Shri Shyamvir on 01.04.11, 13.04.11, 19.04.11, 25.04.11 and 09.08.2011. It was also noticed that before filing of the complaints the said Ravinder, property dealer was involved in two criminals' cases and having a criminal record. The said SCN is extracted below:-

> "As per report of ACP/ Nangloi, one Shyamvir made a complaint against Ravinder r/o Village Baprolla, a property dealer, on 01.04.11, 13.04.11, 19.04.11, 19.04.11, 25.04.11 and 09.08.11 regarding prevention of his legal possession of his plot. However, no strict action was taken by SI Raj Pal, No. D-4517, Division Officer and the then SHO/Ranholla, Inspr. Sajjan Singh, though they are having knowledge that Ravinder was previously involved in two criminal cases and is having a criminal record. They did not take any preventive action against the said Ravinder. Later the said Ravinder alongwith his associate murdered the beat const. Tanvir Singh. Timely preventive action, if taken, could have prevented the murder of Const. Tanvir Singh. However, the SHO and Division Officer failed to take the same.
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> The above said act on the part of SI Raj Pal No. D-4517, Division Officer and the then SHO/Ranhola, Inspr. Sajjan Singh, amounts to gross misconduct, negligence and dereliction in the discharge of their official duties.
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> They are, therefore, called upon to show cause as to why their conduct should not be censured for the above said lapse. Their written reply, if any, should reach this office within 15 days from the date of its receipt, failing which it will be presumed that they have nothing to say in their defence and ex-parte decision will be taken on merits."

4. The applicant filed reply to the said SCN on 2.02.2012. Therein he stated that he was transferred on 28.06.2011 from the said Police

Station and that with respect to one of the above said complaints namely the one dated 13.04.2011, which was filed before his transferred from the said Police Station, he submitted that there was a report of closure submitted by the concerned SI, namely, Mr. Raj Pal to the effect that the said complainant had submitted an application stating that the concerned property dispute between the said Shyamvir and the said Ravinder, property dealer was solved amicably and no legal action on his complaint be taken. On the basis of said report of SI Rajpal, the applicant recommended closing of the complaint of the said Shyamvir. But, however, subsequently it was found that the said Rajpal had forged the so called subsequent statement of the complainant Shyamvir and on the said forged statement he had submitted the report for closer of the complaint of Shri Shyamvir vide his recommendation dated 20.06.2011. Thereafter, there was further complaint of the complainant dated 09.08.2011 which was filed after the transfer of the applicant from the Police Station on 28.06.2011. On the complaint dated 9.08.2011, an action was taken on 22.08.2011 u/s 107/151 of Cr.P.C and in execution of the said action, the said Ravinder, property dealer murdered Constable Tanvir Singh.

5. The disciplinary authority after considering the reply filed by the applicant to the SCN and hearing him in the orderly room without referring to the complaint dated 9.08.2011, but referring to all earlier complaints, held that it was prime responsibility of the applicant as SHO of the Police Station to monitor and be vigilant about the cases filed against said Ravinder, property dealer as he was having two criminal cases and criminal record before the subject complaints were filed and also about the staff working under his control. Thus, giving

detailed reasons the disciplinary authority imposed the penalty of "censure" vide his order dated 25.02.2012 on the applicant. The relevant portion of the reasoning is extracted below:

> "I have perused their replies and also heard them in OR. The local police ailed to take any preventive action right from the first complaint of Shyamvir dated 01.04.11 up to fifth complaint dated 25.04.11. Despite repeated complaints received in the police station no preventive action was taken against the accused Ravinder. On 16.06.11 SI Raj Pal has been instrumental in forging a file the complaint, on the statement of complainant Shyamvir in a matter involving the dispute of property. He did not take any legal action against accused Ravinder. The last complaint dated 09.08.11 was received in the police station in which action u/s 107/151 Cr.P.C. was taken on 22.08.11. Moreover, accused Ravinder has previously been found involved in the four cases prior to the murder of Const.Tanvir. Local police could have initiated adequate preventive action initially as and when the first complaint of Shyamvir was received so that such type of brutal murder of police personnel could be averted. Evidently, it has been established a negligence and slackness on the part of Beat/Division staff. Hence, the notice to SI Rajpal No.D-4517 (Division Officer) is confirmed and his conduct is hereby censured. Moreover, it was the prime responsibility of Inspr. Sajjan Singh (the then SHO/Ranholla) being incharge of police station to monitor and vigilant over the working of the staff under his control. Especially, in such complaints against the persons already having previous involvements in various cases. Hence the notice to Inspr. Sajjan Singh, No. D-1/843 is also confirmed and his conduct is hereby censured."

The appeal filed by the applicant was dismissed by the appellate authority vide order dated 21.08.2012 by hearing the applicant also by a reasoned order.

6. The counsel for the applicant vehemently contended that the applicant has acted upon the report submitted by SI Rajpal bonafide believing that the said SI Rajpal must have filed a true and correct report and there was no reason to suspect the conduct of the said SI Rajpal and this aspect was not considered by the respondents

authorities and, therefore, the penalty order and appellate order be set aside.

7. On closer scrutiny, we are of the opinion that as rightly held by the disciplinary authority the applicant has failed to be vigilant particularly in view of the fact that the said Ravinder, property dealer earlier was having criminal records and he was involved in two criminal cases and the so called fresh statement of the complainant on the basis of which SI Raj Pal submitted the report for closer of the complaint. In this regard had he scrutinized the signatures and handwriting of the complainant on all the complaints and the so called subsequent fresh statement of Shyamvir available in the file or had he personally called the said Shyamvir and heard him personally, he would have come to know the truth and would have prevented subsequent murder of Constable Tanvir. This aspect was properly appreciated by the disciplinary authority while passing the impugned penalty order of censure. The counsel for the applicant has not brought to our notice any violation of any procedural rules or principles of natural justice. 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:-
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> "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.
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> 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 law laid down by the Hon'ble Supreme Court and in view of the fact that the counsel for applicant has not brought to our notice violation of any procedural rules and principles of natural justice, the OA is devoid of merit.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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