CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 4206/2014

Reserved on 11.09.2018
Pronounced on 14.09.2018

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

Sh.K.L.Parashar,
S/o Late Shri C.R.Parashar,
R/o Flat No. 1005, Antriksh Apartments,
GH-248, Kaushambi, Ghaziabad. … Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Delhi Development Authority,
Through its Vice-Chairman,
Vikas Sadan, New Delhi.

2. Member (Finance)
Delhi Development Authority,
Vikas Sadan, New Delhi. … Respondents

(By Advocate: Mrs. Sriparna Chatterjee)

O R D E R

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

Heard Shri Ajesh Luthra counsel for applicant and Mrs.Sriparna Chatterjee, 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:

(a) quash and set aside the impugned orders/actions of the respondents placed at Annexure A/1, Annexure A/2 and Annexure A/3 respectively 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 proposing to hold an enquiry against the applicant, a Memorandum dated 17.07.2007/ 31.07.2007 was issued to him for the following articles of charge:

> Article-1
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> Shri K.L.Prashar, Asstt. Director while working as Supdt. in EHS Branch during the year 1999-2000 recommended the case for issue of Mortgage permission in respect of 39 EHS flats allotted to All India Naval Drafts Man Association on incorrect and faulty Demand-Cum-Allotment letters issued to the All India Naval Drafts Men's Association without incorporating the conversion charges in total cost of the flat and giving 5% rebate on disposal cost which was not applicable to the Association. This caused a huge financial loss to the Authority.
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> Article-II
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> The said K.L.Prashar, Asstt. Director while working as Supdt. In EHS Branch during the year 1999-2000 recommended the case for issue of Conveyance Deed papers in respect of 35EHS flats allotted to All India Naval Draftsman Association without recovery of Conversion Charges and obtaining NOC from the Banks where these flats were mortgaged. Thereafter, Shri K.L.Prashar recommended the case for issue of Possession letters in respect of these 35 flats to which incorrect and faulty demand letters were issued. The motive behind this Act was to extend favour to the Association thereby causing financial loss to the Authority.
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> By his above act Shri K.L.Prashar, Asstt.Director exhibited lack of absolute devotion to duty, lack of absolute integrity and acted in a manner unbecoming of a Government servant thereby contravened Rule 4 1(i) (ii)and (iii) of DDA Conduct, Disciplinary and Appeal Regulations 1999 as made applicable to the employees of the Authority."

4. Along with the said memorandum, articles of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. Thereafter, following all the relevant

procedural formalities, an enquiry was conducted. Inquiry report dated 13.10.2008 was submitted holding that both the charges were proved. Inquiry report was furnished to the applicant and he also submitted his representation against the inquiry report. After carefully considering the inquiry report and the representation and facts of the case, the disciplinary authority vide order dated 06.03.2009 imposed a penalty of reduction of pay by two stages (equivalent of two increments) with immediate effect upto the date of his retirement and during the penalty period he would not earn increment. The appeal preferred by the applicant dated 31.05.2009 was rejected by the appellate authority vide order dated 18.06.2009. The applicant had challenged in the earlier OA No.18/2010 both the penalty order dated 06.03.2009 and the appellate authority order dated 18.06.2009. In the said OA, this Tribunal vide order dated 17.10.2012 set aside only the appellate order dated 18.06.2009 and remanded the matter back to the appellate authority to pass a fresh, reasoned and speaking order in accordance with law within a period of three months in the light of the observations made by the Tribunal at para 8 of the said order. Para 8 of the said order is extracted below:

> "We are of the opinion that the above observations have not been taken into consideration by the disciplinary authority and the appellate authority. We, therefore, wish to remand the matter back to the appellate authority to consider the matter again in the light of facts put up by the Vigilance Division and also the applicant in his reply and defence that many of the important files were not routed through him. No malafide or motive has also been proved against the applicant. In view of the same, the impugned appellate orders dated 18.06.2009 are quashed and set aside with direction to the appellate authority to reconsider the matter in the light of observations made by us and pass fresh, reasoned and speaking orders in accordance with law within a period of three months from the receipt of a certified copy of this order."

The appellate authority in compliance with the directions of this Tribunal dated 17.10.2012 has passed an order dated 25.06.2013. In this OA, the applicant has challenged the enquiry report (Annexure A-3), the order passed by the disciplinary authority (Annexure A-1) and the order passed by the appellate authority (Annexure A-2) in compliance with the order passed by this Tribunal in OA No.18/2010.

5. We have perused the order passed by the appellate authority dated 25.06.2013. It is a reasoned order based on the facts available in the departmental enquiry proceedings.

6. At the time of hearing, the counsel for the applicant brought to our notice the judgment of the Hon'ble High Court of Delhi passed in LPA No.2007/2005 dated 21.05.2013 (**DDA** Vs. **All India Naval Draughtsman**), wherein the High Court did not find fault with non inclusion of conversion charges in the demand-cum- allotment letter. Based on the said order which was confirmed by the Hon'ble Supreme Court, the counsel for the applicant submitted that the conclusion of the inquiry officer holding that charge no. 1 as proved is not correct. In this regard, it is noticed that the said order of the Hon'ble High Court is of the year 2013 and that of the Supreme Court is of 2014 but the inquiry report is of the year 2009. The Inquiry officer is required to take into account the records available in the departmental proceedings. As such the conclusion of the inquiry officer cannot be faulted on the basis of the above said judgment of the Hon'ble High Court which has been upheld by the Hon'ble Supreme Court. In support of the impugned appellate order dated 25.06.2013, counsel for the respondents brought to our notice the law laid down by the Hon'ble

Supreme Court in the case of **Nirmala J.Jhala** Vs. **State of Gujarat** (2013 (4) Scale 579).

7. It is noticed that the applicant had not challenged the enquiry report (Annexure A-3) in the earlier OA No.18/2010 filed by him. In the earlier OA, though he had challenged the order passed by the disciplinary authority dated 06.03.2009 (Annexure A-1), this Tribunal had not set aside the said order. In view of the above facts the applicant cannot challenge the inquiry report (Annexure A-3) and the order passed by the disciplinary authority dated 6.03.2009 (Annexure A-1) once over again. As stated above, the order of the appellate authority dated 25.06.2013 is a speaking order based on records available in the departmental proceedings. The applicant had not bought to our notice any violation of any procedural rules or principles of natural justice in the holding of the entire departmental proceedings. 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
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> (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;

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 the case narrated above and in view of the law laid down by the Hon'ble Supreme Court and in view of the applicant having not brought to our notice violation of any of the procedural rules, we do not find any merit in this OA. Accordingly, the OA is dismissed. No costs.

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

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