CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.3282 of 2013

Orders reserved on : 20.09.2018

Orders pronounced on : 25.09.2018

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

Sh. Mahesh Chand Meena,
S/o Late Sh. Ishwar Ram Meena,
r/o C-8, Type-III, Officers Flats
Near Gate No.5, NPL, Kingsway Camp.
New Delhi.

....Applicant

(By Advocate : Shri Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building,
I.P. Estate, New Delhi.

2. The Joint Commissioner of Police,
Northern Range,
PHQ, MSO, Building,
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
Outer District,
Road No.43, Pushpanjali,
Delhi-34.

.....Respondents

(By Advocate : Ms. Sumedha Sharma)

ORDER

Ms. Nita Chowdhury, Member (A):

Heard Mr. Ajesh Luthra, learned counsel for applicant and Ms. Sumeda Sharma, learned counsel for respondents, perused the pleadings and all the judgments produced by both the parties.

2. In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

> "(a) quash and set aside the impugned orders placed at Annexure A/, A/2 and A/3, with all consequential benefits.
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> (b) award costs of the proceedings
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> (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 vide order dated 2.7.2011, a Show Cause Notice (SCN) was issued to the applicant by the disciplinary authority , namely, the Addl. Deputy Commissioner of Police, Outer District, Delhi for failure to register the case immediately despite instructions of senior officers. The said SCN is reproduced below:

> "On perusal of report submitted by ACP/Bawana into the complaint of Sh. Sanjeev Kumar r/o N-164, JJ Colony, Savda, Delhi on 18.04.2011, it has been observed that a case FIR No.150/11 dated 21.06.2011 u/s 420 IPC PS Kanjhawla has been registered after a delay of 64 days.
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> Inspr. Mahesh Chand Meena No.D-866 SHO/Kanjhawla and S.I. Ravi Kumar No.D-4562 I.O. failed to register the case immediately despite instruction of senior officers.
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> Therefore, Inspr. Mahesh Chand Meena No.D-866 and S.I. Ravi Kumar No.D-4562 are hereby called upon to show cause as to why disciplinary action should not be taken against him for the above said lapse. Their reply if any should reach the undersigned within 15 days from the date of receipt of this notice failing which it will be presumed that they have nothing to say in this regard and the matter will be decided on merit."

The applicant submitted reply to the said show cause notice.

4. After considering the reply submitted by the applicant to the said Show Cause Notice, the disciplinary authority imposed a penalty of 'Censure' upon the applicant vide order dated 11.08.2011. The relevant portion of the said order is reproduced below:-

> "A Show Cause Notice for Censure was issued to Inspr. Mahesh Chand Meena, No. D-866 (PIS No.16920038) and SI Ravi Kumar, No. D-4562 (PIS No.16080382) vide this office No. 9078-79/HAP/Outer District dated 2.7.11, on the allegations that on perusal of report submitted by ACP/Bawana into the complaint of Sh. Sanjeev Kumar r/o N-164, JJ Colony, Savda, Delhi on 18.4.11, it has been observed that a case FIR No. 150/11 dated 21.6.11 u/s 420 IPC PS Kanjawala has been registered after a delay of 64 years.
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> Inspr. Mahesh Chand Meena, No. D-866 has received the copy of SCN and submitted his reply. He has contended that the complaint approached him on 18.4.2011 alleged that an unknown person cheated him by exchanging his ATM Card and transferring Rs.39000/- from his account in the another's account. The complaint was marked to SI Ravi Kumar, No. D-4562 to enquire the matter. After enquiry the SI has stated that the complainant is reluctant to get registered the criminal case. Thereafter he has directed to the SI to record the statement of the complainant and registered the case. Later on the case was registered after recording the statement of the complainant.
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> SI Ravi Kumar, No. D-4562 has received the copy of Show Cause Notice and submitted his reply. In his reply he has contended that on 18.4.2011 the complainant was produced by him before the SHO/Kanjawala who directed him to enquiry in to matter. During the enquiry it was found that the complainant has been cheated by fraudulently exchanging ATM Card and then subsequently transaction from his account. Later on the complainant was requested to get his statement recorded but he remained reluctant and did not join. Finally on 21.6.2011 his statement was recorded by another IO and case was registered accordingly.
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> I have carefully gone through the written as well as oral submissions put forth by the Inspector and SI which is not found to be satisfactory. During O.R., Inspr. reiterated the same facts that being SHO he marked the complaint to SI Ravi Kumar for enquiry but he did not put up the enquiry report. But, such lack of supervision on the part of SHO is not acceptable and such a long delay of more than two months in registering a genuine case warrants serious

> action. On the other hand the act of the SI is also found negligent in delaying the enquiry which is a serious lapse. Therefore, dissatisfied with the written and oral submission putforth by the Inspector and the SI, the proposed Show Cause Notice issued to them is confirmed and the conduct of Inspr. Mahesh Chand Meena, No. D-866, SHO/Kanjawala and SI Ravi Kumar, No. D-4562 is hereby CENSURED.
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> Let a copy of this order be given to them free of cost. They can file an appeal against this order to the Joint C.P./Northern Range, Delhi within 30 days from the date of its receipt, on non-judicial stamp paper value 00.7 (sic) by enclosing a copy of this order, if they so desires."

The Applicant preferred an appeal. The appellate authority after considering his appeal and also after hearing him personally in orderly room 19.10.2012 rejected his appeal vide order dated 23.11.2012. The relevant portion of the appellate authority is extracted below:

> "Inspr. Mahesh Chand Meena, No.D-866 appeared in orderly room on 19.10.2012. During orderly room, he pleaded that the complaint of case FIR No.150/11 was entrusted to SI Ravi Kumar for necessary action on 18-04-2011 and the complainant never approached the appellant since then. He further deposed on reviewing the progress, the SI told that he had to get some verification done from the complainant but the complainant is not co-operating. Later, the complaint was marked to ASI Rajender Singh who recorded the statement and then the case was registered. The appellant was asked when the SI did not work in time, had he initiated anything in writing against SI Ravi Kumar. At this, he could not say anything and only pleaded for mercy.
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> The above discussion clearly indicates that the appellant while posted as SHO/Kanjhawala did not work in a professional manner. He failed to supervise the work of his subordinates which was not expected from a supervisory officer of a police station. As such, I find no reason to interfere with the punishment awarded by the disciplinary authority. Hence, the appeal is hereby rejected."

5. The learned counsel for the applicant vehemently submitted that the impugned SCN, the penalty order and the appellate order are violative of Articles 14 and 16 of the Constitution of India and they are discriminatory in nature as according to him, complainant

never approached the applicant with any complaint etc. after 18.4.2011. However, while reviewing the progress of the pending complaints, the applicant inquired from SI Ravi Kumar who told the applicant that he had to take some clarification from the complainant but the complainant was not available and the applicant also directed the said SI to take help of the beat staff of JJ Colony, Savda to locate the complainant and finanlize the enquiry urgently but despite the applicant's repeated directions and enquiry, SI Ravi Kumar could not achieve any progress in the matter and told the applicant that the complainant was reluctant to get a case registered. However, in order to find out the veracity of the version of SI Ravi Kumar, the complaint of complainant Shri Sanjeev Kumar was taken back from him and it was marked to ASI Rajender Singh to contact the complainant and record his statement and thereafter the statement of complainant was recorded by ASI Rajender Sing and case FIR No.150/11 u/s 420 IPC PS Kanjhawala was registered. But, however, from the close scrutiny of the penalty order dated 11.8.2011 it is clear that the said SI Ravi Kumar was also awarded the punishment of censure pursuant to departmental action was initiated against him also. The counsel for the applicant has not brought to our notice any violation of procedural rules in the above said departmental proceedings. With regard to the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon'ble Supreme Court has laid down the law in several cases, which have been enumerated below:

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.
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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:
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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."

6. In view of the facts of the case and in view of the law laid down by the Hon'ble Supreme Court and as no violation of any procedural formalities is alleged nor found, there is no merit in the OA.

7. In the result, the present OA being devoid of merit is dismissed. No order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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