CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1137 of 2014

This the 20th day of November, 2018

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

Yash Pal Singh,s/o Kanwal Singh
r/o Qut, No.819, Sec-5,
R.K.Puram, New Delhi-22.

....Applicants

(By Advocate : Shri R.K. Jain)

VERSUS

1. Commissioner of Police,
Police Headquarter,
I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
Traffic (VIP), PHQ, I.P. Estate,
New Delhi.

3. Addl. Deputy Commissioner of Police,
Traffic, PHQ, I.P. Estate,
New Delhi.

.....Respondents

(By Advocate : Mrs. P.K. Gupta)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard Shri R.K. Jain, counsel for applicant and Mrs. P.K. Gupta, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, applicant is seeking the following reliefs:-

"i) The impugned orders passed by the disciplinary authority Dt. 4.12.12 and 7.2.2013 and the appellate authority Order Dt. 14.8.2013 may kindly be quashed and set aside.

ii) The respondents may be directed to treat the period of suspension as on duty for all purposes.

iii) The pay of the applicant should be accordingly re-fixed and arrears be paid with interest to applicant.

iv) All consequential benefits may be granted to the Applicant.

v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicant.

vi) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant – Head Constable (Drv.) vide order dated 2.2.2012 on the allegation that while posted in M.T. Section of Traffic Unit, he was detailed to perform duty on VIP Route Crane No.DL1LE-0611 (T-104A) from 8 AM to 8 AM as per duty roster dated 9.10.2011. On 9.10.2011 at about 11.00 PM, he took away the crane from Traffic Headquarters, located at Dev Prakash Shastri Marg, Pusa, New Delhi without making departure in Roznamcha and without informing SI/MT/Traffic/Duty Officer and Traffic Control Room with an ulterior motive and for doing illegal activity.

3.1 For the above misconduct, the applicant was placed under suspension vide order dated 10.10.2011. The said

departmental enquiry was conducted on day-to-day basis by the Enquiry Officer, who after conducting the enquiry submitted his finding concluding therein that the charge against the applicant was not proved. However, the disciplinary authority after pursuing the finding sought clarifications on certain shortcomings in the findings from the E.O. under Rule 16 (XI) of Delhi Police (Punishment & Appeal) Rules, 1980 vide letter dated 4.12.2012. Thereafter E.O. has submitted his supplementary findings on 14.12.2012 concluding that the charge contained in the DE against the applicant stands proved as the applicant took the crane outside from the office premises to R.K. Puram.

3.2 The copies of findings of the DE as well as supplementary finding along with copy of clarification sought, were sent to the applicant vide UO No.7.1.2013 which was served upon the applicant on 10.1.2013 for making his representation, if any. The applicant submitted his representation in response to the findings and supplementary findings of the Enquiry Officer, which was received by the respondents on 16.1.2013.

3.3 The disciplinary authority had carefully gone through the representation submitted by the applicant, the findings as well as the supplementary findings submitted by the EO and other material available on DE file. The applicant was also heard in person in O.R. on 1.2.2013 wherein, according to the respondents, he had taken the crane in question outside the

Traffic Headquarters, located at Dev Prakash Shastri Marg, Pusa, New Delhi only for taking meal, without making his departure in Roznamcha and that he has not demanded any money from taxi driver. Considering the overall facts and circumstances of the case, the disciplinary authority awarded the punishment of forfeiture of one year approved service permanently entailing subsequent reduction in the pay of the applicant from Rs.10670 + 2800 to 10270 + 2800 and the applicant was reinstated in service and his suspension period from 10.10.2011 to 7.2.2013 decided as 'not spent on duty' for all intents and purposes which will not be regularized in any manner vide order dated 7.2.2013.

3.4 Aggrieved by the said order of the disciplinary authority, the applicant filed his appeal before the appellate authority and the appellate authority has considered the appeal of the applicant at length and also heard him in person. The appellate authority felt that punishment of forfeiture of one year service permanently was harsh and, therefore, changed the said punishment awarded by the disciplinary authority to that of 'one year forfeiture of service, without cumulative effect and the period under suspension remained as 'not spent on duty'.

3.5 Feeling aggrieved by the aforesaid orders of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

4. Counsel for the applicant contended that the punishment imposed upon the applicant is harsh.

5.1 Counsel further contended that no statement of taxi driver or Joint CP/Traffic was taken and also the EO did not prove his fault in the initial report but in the subsequently EO proved the fault in the findings and further that it is a case of no evidence.

5.2 Another contention of the applicant is that taking the crane for having food is no misconduct. There is no allegation of misconduct at all. There is no loss to the Deptt. and there is no complaint either.

5.3 Counsel also contended that the disciplinary authority has accepted the fact that it is not established that he had taken the crane out for illegal activities.

5.4 Counsel further submitted that the punishment is based upon the oral information given by the senior officer of Delhi Police, but behind the back of applicant. Material collected behind the back cannot be used as basis to punish the applicant.

6. The counsel for the respondents has submitted that all the grounds taken by the applicant in the instant OA are not sustainable in the eyes of law as the applicant has himself stated in one of the grounds that 'because taking the crane out for having food is no misconduct', and the base for issuance of the charge is that while the applicant posted in

MT/Traffic and deployed on VIP Route Crane No.DL1LE0611 (T-104A) from 8AM to 8Am as per duty roster dated 09.10.2011, at about 11PM on 09.10.2011, he took away the crane from Traffic Headquarters, Dev Prakash Shastri Marg, Pura, New Delhi without making departure in Roznamcha and without informing SI/MT/Traffic/Duty Officer and Traffic Control Rook with ulterior motive and doing illegal activity.

6.1 Counsel further submitted that from the above said admission on the part of the applicant makes it clear that he had taken away the crane on the said date without making departure in Roznamcha and without informing the concerned authorities and in the inquiry proceedings this fact was evidently established by the Enquiry Officer. Although since no evidence came on record with regard to illegal activities, the disciplinary authority imposed only the punishment of forfeiture of one year approved service permanently entailing subsequent reduction in the pay of the applicant from Rs.10670 + 2800 to 10270 + 2800 and the applicant was reinstated in service and his suspension period from 10.10.2011 to 7.2.2013 decided as 'not spent on duty' for all intents and purposes which will not be regularized in any manner vide order dated 7.2.2013 and in appeal the said punishment was reduced to that of 'one year forfeiture of service, without cumulative effect and the period under suspension remained as 'not spent on duty'. As such counsel contended that applicant was charged for the aforesaid lapse

and the said punishment is commensurate with the charge levelled against the applicant and therefore, the present OA deserves to be dismissed by this Tribunal.

7. Before coming to the issues raised by the applicant in this OA, it is pertinent to note that 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:
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> 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. i. the finding of fact is based on no evidence."

8. Keeping in view the aforesaid observations of the Apex Court, this Court finds that in this case charge levelled against the applicant is confined to taking away the crane from Traffic Headquarters without making departure in Roznamcha and without informing the concerned authorities with ulterior motive and doing illegal activity on 9.10.2011 at 11 PM. Although the applicant has himself admitted that he had taken away the said vehicle on the said date but not for any illegal activity but for taking food, which proves that he had taken away said crane on that day and further that in the inquiry proceedings, the Enquiry Officer has on the basis of deposition of the PWs proved on record that the applicant has not taken any permission of higher authorities or without making entry in Roznamcha. On the basis of the said findings, the disciplinary authority imposed the said punishment which was later in appeal reduce to 'one year forfeiture of service, without cumulative effect and the period under suspension remained as 'not spent on duty' by the appellate authority.

9. Most of the grounds taken in the OA relates to the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against him. It is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that *it is only in those cases where the punishment is so disproportionate that it*

shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment. In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

> "The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

10. Having regard to the gravity of the article of charge, the punishment awarded by the disciplinary authority vide impugned order dated 7.3.2013 and the said punishment awarded by the disciplinary authority was reduced to one year forfeiture of service, without cumulative effect and the period under suspension remained as 'not spent on duty' vide order dated 14.8.2013. Hence, we are of the considered view that punishment imposed by the impugned orders is not so disproportionate that it shocks the conscience of the court, therefore, we do not find any case is made out for interference by the Tribunal even on the question of quantum of punishment.

11. 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.

12. Accordingly, the 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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