CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1913 of 2016

This the 13th day of November, 2018

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

Raj Nath Singh,
Son of Shri Jai Singh,
Per. No. 224126
U.D.C./B.G. (Now S.B.G.)
Ordinance Factory,
Muradnagar, District – Ghaziabad.

....Applicant

(By Advocate : Shri S.K. Vashisht)

VERSUS

1. Union of India, Ministry of Defence,
Ordinance Factory Board, 10-A, S.K. Bose Road,
Calcutta 700001.

2. General Manager, ordinance Factory,
Muradnagar, Distt. Ghaziabad.

3. Additional General Manager/ Administration,
Ordinance Factory Muradnagar, Distt. Ghaziabad.

4. Sri N.K. Gupta, Joint General Manager/QC,
Ordinance Factory Muradnagar/Inquiry Officer.

5. Smt. Sarwanti Devi Q.S. Establishment,
Beg No.855047/OFM (Ordinance Factory Muradnagar)
Ghaziabad.

.....Respondents

(By Advocate : Shri Hanu Bhasker)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard Mr. S.K. Vashisht, counsel for applicant and Shri Hanu Bhasker, 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- To issue an order or direction setting aside the impugned orders dated 19.10.2012 passed respondent no.1 rejecting the appeal of the applicant as well as order dated 23.02.2012 passed by respondent no.2 awarding punishment to the applicant and not to give effect to these orders.
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> ii- To issue any other order or direction, as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant vide Memorandum of chargesheet dated 14.2.2011 vide which following articles of charges were levelled against the applicant:-

> "अनुच्छेद –1: श्री राजनाथ सिंह, प्र. श्रे. लिपिक/बी. जी (अब एसवीजी) आयुध निर्माणी मुरादनगर के विरुद्ध घोर अवचार - अपने बिल के बारे में पुछताछ करने गये पीवी अनुभाग के अभद्र व्यवहार करने का आरोप है |
> "अनुच्छेद –2: श्री राजनाथ सिंह, प्र. श्रे. लिपिक/बी. जी (अब एसवीजी) आयुध निर्माणी मुरादनगर - अभद्र व्यवहार करने का आदी होने का आरोप है |
> "अनुच्छेद –3: श्री राजनाथ सिंह, प्र. श्रे. लिपिक/बी. जी (अब एसवीजी) आयुध निर्माणी मुरादनगर के विरुद्ध घोर अवचार - अनुशासनहीनता बरतने तथा एक सरकारी कर्मचारी न होने जैसा आचरण करके केंद्रीय सिविल सर्विस (आचरण) नियमावली 1964 के नियम – 3 (1) (iii) का उल्लंघन करने का आरोप है |"

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 3PWs and 3DWs and considering the defence statement filed by the applicant, the Inquiry Officer evaluated the evidence before him and after discussing the evidence of PWs and DWs, came to the conclusion that the charges framed against the applicant were proved vide his Enquiry report dated 6.12.2011. Thereafter upon receipt of the aforesaid inquiry officer's report, the respondent no.3 issued letter dated 28.12.2011 and 24.1.2012 to the applicant for submitting his written statement or reply. In pursuance of which, the applicant submitted his reply to the respondent no.3 on 25.1.2012. The disciplinary authority considered the reply of the applicant 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 stoppage of one increment (whenever next due) for a period of one year with cumulative effect vide impugned order dated 23.2.2012. The appeal filed by the applicant was considered by the appellate authority and the appellate authority also considered the entire material on record and by speaking order dated 19.10.2012 rejected the appeal.

5. The counsel for the applicant vehemently contended that the allegations leveled against the applicant are not to be treated as misconduct but the same is only a rude language of the applicant which had been made basis for initiating the

inquiry against the applicant. As the applicant had only stated that '**LATH MARO BILL KO**, MUJHE APNE COMPUTER PER KAAM PURA KARNE DO' when his co-staff working in his section asked about the statue of the reimbursement bill of the complainant (respondent no.5) and the same cannot be said to be a misconduct.

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. From the evidence it is also clear that the inquiry officer has relied upon the evidences of the PWs and held that the applicant is found to be guilty of the charges levelled against him.

7. The counsel for the applicant has not shown any deposition to show that the applicant had not used such words rather it is an admitted fact that the applicant has used such words while co-staff came in the section where the applicant was working to inquire about the status of her medical reimbursement claim. The counsel for the applicant relied upon the judgment of Hon'ble Apex Court in the case of Ranjit Thakur vs. Union of India and others, 1987 AIR 2386. 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 judgment is 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:-
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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:-
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> > "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. i. the finding of fact is based on no evidence."

8. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against him is concerned, 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".

9. Having regard to the gravity of the article of charge nos.1 to 3, the punishment awarded by the disciplinary authority vide impugned order dated 23.2.2012, which is a detailed and a reasoned order, and the same was confirmed by the appellate authority vide Order dated 19.10.2012, we are of the considered view that punishment imposed by the impugned orders dated 23.2.2012 and dated 19.2.2012 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.

10. 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.

11. 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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