

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3768 of 2013

Orders reserved on : 25.09.2018

Orders pronounced on : 28.09.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Madan Chauhan, age-41 years,
s/o Sh. Bihari Lal,
r/o Qtr. No.-578, Sector-9,
R.K. Puram, New Delhi-22.

....Applicant
(By Advocate : Shri Rajesh Kumar for Shri Sachin Chauhan)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi-1.
2. Intelligence Bureau
Through its Director
35, S.P. Marg,
New Delhi-110001.
3. The Joint Director/E,
Intelligence Bureau,
35, S.P. Marg,
New Delhi-110001.
4. The Deputy Director,
Intelligence Bureau,
35, S.P. Marg,
New Delhi-110001.

.....Respondents

(By Advocate : Shri Gyanendra Singh)

O R D E R

Ms. Nita Chowdhury, Member (A):

Heard Mr. Rajesh Kumar for Shri Sachin Chauhan, learned counsel for applicant and Shri Gyanendra Singh, 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:-

“i) To set aside the order dated 8.10.13 whereby the appeal of the applicant has been rejected at A-1, Office Memorandum dated 20.6.12 along with imputation of misconduct issued under Rule 16 of CCS (CCA) at A-1A and Order dated 26.9.12 whereby the minor punishment i.e. Censure is inflicted upon the applicant with all consequential benefits including seniority and promotion and pay and allowances.

Or/and

ii) Any other relief which this Hon'ble Court deems fit and proper may also awarded to the applicant.”

3. The relevant facts of the case are that applicant was appointed as Security Assistant Guard (SAG) in Intelligence Bureau in 1996 and thereafter promoted to the rank of Junior Intelligence IInd (Guard-JIO-II/G in the year 2008. The applicant was given a letter dated 15.2.12 which seeks clarification on the following count:

“According to duty chart of DMC branch, your duty has been assigned as “general duty” (from 0930-1800 hrs.). However, today (15.02.2012), you did not turn up for official duty on time without any prior intimation, and you remained absent today till 1430 Hrs. It amounts to dereliction of duty and indiscipline on your part. If there had been any personal or social problem at your end, as per official procedure, you would have informed office citing reason of not coming for official duty on time and you did not do the same.”

The applicant submitted his reply dated 17.2.2012 in respect of the said letter dated 15.2.2012. Thereafter the applicant was served with an order dated 27.2.2012 asking him to submit half day casual leave for the Feb. 15, 16, 17, 21, 22, 23 & 27 Feb, 2012

on 28.2.2012 and applicant in pursuance of the same submitted half day casual leave for the aforesaid days on 28.2.2012.

Thereafter the applicant has been served a Memorandum dated 20.6.2012 along with imputation of misconduct under Rule 16 of the CCS (CCA) Rules, 1965 on the following allegation:-

“ARTICLE”

That the said Shri Madan Chauhan, JIO-II/G while posted under DCIO/MAC, submitted an application dated February 14, 2012, addressed to ADD/MAC, requesting for duty in afternoon shift duty (1430 to 2100 hrs). He was advised by DCIO/MAC to wait and perform general duty till the decision is taken by ADD/MAC on his request. But Shri Madan Chauhan by disobeying the directions of his controlling officer, joined office at 1430 hrs, on 15th February 2012. His explanation was sought vide memo No.MAC/DMC/2012-683-83 dated February 15, 2012. Shri Madan Chauhan submitted his explanation dated February 17, 2012, wherein he mentioned about his family problems and made allegations of bias attitude of his controlling officer against him. Further, Shri Chauhan continued violating duty chart and reported for duty at 1430 hrs. on several days.

On February 22, at around 6.00 PM, a telephone call was received on office number from a lady who identified herself as a sister of Shri Madan Chauhan and alleged that officers were harassing Shri Madan Chauhan. She threatened that if something untowards happen to his brother, who would take the responsibility. After few minutes, a lady claiming to be the sister of Shri Madan Chauhan reached the Reception Counter of IB (gate no. 07 of North Block) with PCR vehicle. She shouted and created ugly scene there. When DCIO/MAC-DMC reached at the spot, she shouted at him and alleged harassment of his brother, by the colleagues and officers.

Thus by disobeying the official orders, and bringing outside influence in official matters, Shri Madan Chauhan has acted in a manner which is unbecoming of government servant, thereby, violated the Rule 3 (1) (iii) and Rule 20 of the CCS (Conduct) Rules 1964.”

The applicant submitted representation to the said memorandum of charges.

4. After considering the reply submitted by the applicant to the said Memorandum, the disciplinary authority imposed a penalty of

'Censure' upon the applicant vide order dated 26.9.2012 (Annexure A-2). The relevant portion of the said order is reproduced below:-

"WHEREAS disciplinary proceedings were initiated against Shri Madan Chauhan (PIS No.108550), JIO-II/G under Rule 16 of the CCS (CCA) Rules 1965, vide Memo No. 1/Vig/2012(54)-815-22 dated June 20, 2012, on the charge that while posted under DCIO/MAC, he disobeyed the directions of his senior officers and joined office in afternoon shift at 1430 hrs on several occasions against his scheduled general duty (09.30 AM to 06.00 PM). Further, on February 22, 2012 at around 6.00 PM, he also brought outside influence of his sister in furtherance of his service matters.

AND WHEREAS in reply to the aforesaid charge-memo, Shri Madan Chauhan submitted his representation dated June 27,2012 wherein he denied the charges leveled against him. He stated that he never disobeyed the order of his senior officers nor ever violated the duty chart. He never brought his sister to office to help him in official matters. He claimed that he was orally permitted by his Controlling Officer to attend the office in the afternoon shift. He also pointed out his serious domestic problems which compelled him to attend office in afternoon shift.

NOW, THEREFORE, the undersigned being the Disciplinary Authority after having carefully gone through the relevant documents on record and submissions made by the Charged Officer in his representation dated June 27,2012, has come to the conclusion that the charges framed against Shri Madan Chauhan that he attended office in afternoon shift of his own wish is proved on the basis of evidences on record including statement of DCIO/MAC. Similarly, other part of the charge that he brought outside influence on February 22, 2012 was also proved against the Charged Officer. However, keeping in view the facts and circumstances of the case including the domestic problems being faced by the Charged Officer, the undersigned is of the view that the ends of justice would be met if the penalty of 'Censure' is imposed on Shri Madan Chauhan, JIO-II/G and orders accordingly."

The Applicant preferred an appeal. The appellate authority after considering his appeal rejected his appeal vide order dated 8.10.2013. The relevant portion of the appellate authority is extracted below:

"NOW, THEREFORE, the undersigned being the Appellate Authority, after having carefully gone through all the documents on record brought to my knowledge and

submissions made by Shri Madan Chauhan, JIO-II/G in his appeal, has come to the conclusion that the Disciplinary Authority had rightly held the charges 'proved' against the appellant. His claim that the DCIO/MAC had orally permitted him to attend office in the afternoon shift is not correct as DCIO/MAC has denied having given any such permission to him. Further, he has himself admitted that his sister had visited the office. His sister had made a threatening call to office on February 22, 2012 at around 1600 hrs. and also reached office after a few minutes with PCR van. Thus, the charge of bringing outside influence to office is also proved against him. Further, there are no procedural infirmities in the conduct of disciplinary proceedings as the same were conducted under Rule 16 of the CCs (CCA) Rules 1965 and the penalty of 'Censure' imposed on Shri Madan Chauhan by the Disciplinary Authority commensurate with the gravity of proven misconduct. Therefore, the undersigned is of the opinion that there are no grounds which may warrant interference of the Appellate Authority in the case. Accordingly, the penalty of 'Censure' imposed by the Disciplinary Authority is confirmed and the appeal preferred by Shri Madan Chauhan, JIO-II/G is rejected."

5. The learned counsel for the applicant vehemently submitted that the impugned memorandum, 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, the orders of the disciplinary and appellate authorities are non-speaking and unreasoned orders and further the punishment awarded upon the applicant is disproportionate to the charge levelled against him and also the said punishment is based on suspicious and surmises. Counsel further submitted that half day leave for the said periods have demanded by the respondents which the applicant has complied with. However, counsel for the applicant has not brought to my 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.

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.”

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.

**(Nita Chowdhury)
Member (A)**

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