

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

O.A. No.3974 of 2016

Orders reserved on : 08.10.2018

Orders pronounced on : 10.10.2018

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

Jai Narain-I,
Inspector in Delhi Police,
PIS No. 16900113
Aged about 51 years,
s/o Sh. Fateh Singh,
R/o 91-B, Jyoti Apartment,
Sector-14 Extension,
Rohini, New Delhi-85.

....Applicant

(By Advocate : Shri Anil Singal)

VERSUS

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Addl. C.P. (Traffic)
PHQ, IP Estate, New Delhi.

.....Respondents

(By Advocate : Ms. Harvinder Oberoi)

ORDER

Heard Shri Anil Singal, learned counsel for applicant and Ms. Harvinder Oberai, 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:-

- “1. To quash and set aside the impugned Order of Punishment dt. 21.5.2013 and Appellate Order dt. 9.10.2015 with all consequential benefits.

2. To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts and circumstances of the case."

3. The relevant facts of the case are that applicant while working as Inspector in Delhi Police was also issued a Show Cause Notice for censure dated 13.9.2012 on the following allegation that on receipt of a complaint regarding buses plying on route No.940, 944 and 567 from Sultanpuri Bus Terminal to Central Secretariat without valid permits, a surveillance was carried out on 16.03.2012 by PRG/Traffic at Sultanpuri Bus Terminal and Shadipur Bus Terminal. One bus bearing Regn. No.DL-1PB-0745 started from Sultanpuri Bus Terminal which took and dropped the passengers from Fish Market Sultanpur, Road No.316, S-Block Mangol Puri and Y-Block Mangolpuri. At about 09.30 am, the bus reached at Shadipur Bus Terminal where it was intercepted by the PRG/Traffic and got it prosecuted and impounded through ZO/ASI Kanwal Pal Singh, No.2031/T (ZO of Patel Nagar Circle). The driver of the bus could not produce Fitness Certificate, Insurance and Registration Certificate. The driver of the bus in his statement has stated that his bus plies from Sultan Puri to central Secretariat in the morning and comes back in the evening and on route, he picked/dropped the passenger from/at different points. He further disclosed that 4/5 more white line buses are also plying on this route. The bus is having CC permit but do not comply with permit conditions. The applicant and other three officials under whose jurisdiction, the bus was found plying unauthorisedly, failed to take the appropriate action against the same.

The applicant submitted his 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 21.5.2013 (Annexure A-1). The relevant portion of the said order is reproduced below:-

"The copy of the show cause notice was served upon them and they have submitted their written replies and also appeared before the undersigned on 26.02.2013. I have carefully gone through the written replies as well as oral submission by them. The replies given by the TIs that they were engaged in various duties and were not responsible for this unauthorized running of buses. This plea is not acceptable. Being the area officers, they have to take appropriate action against these buses plying without valid permit in their jurisdiction. I confirm the show cause notice issued to Inspr. Jai Narain, No. D/2974, Inspr. Mahesh Narain, No. D/3132, SI Krishan Chand, No. 1949/D (now D/2268) & ASI Vidya Dhar, No.2071/T and their conduct is hereby censured for the above lapse.

Let a copy of this order be given to Inspr. Jai Narain, No. D/2974, Inspr. Mahesh Narain, No. D/3132, SI Krishan Chand, No. 1949/D (now D/2268) & ASI Vidya Dhar, No.2071/T. They can file an appeal against the above said punishment to the appellate authority within 30 days from the date of its receipt on a non judicial stamp paper valued Rs.00.75 by enclosing a copy of this order, if they so desire."

The Applicant preferred an appeal. The appellate authority after considering his appeal rejected the same vide order dated 9.10.2015. The relevant portion of the appellate authority is extracted below:

"I have carefully considered the appeal in the light of facts & circumstances of the case, material available in file and also heard the appellants in O.R. It was established during the surveillance conducted by the PRG team of Traffic Unit that buses were plying without valid permits on Route No.944 from Sultanpuri to Kendriya Terminal via Sultanpuri, Mangolpuri, Rohtak Road, Shivaji Marg, Patel Nagar, Shanker Road, Park Street, North Avenue/Talkatora Road,

Church Road and Kendriya Terminal. The bus route covering the Traffic Circles vis Rohini, Punjabi Bagh, Patel Nagar, Karol Bagh, Parliament Street and Chanakya Puri. The applicants No.1 & 2 being TIs of Chankyapuri and Karol Bagh Traffic Circles respectively failed to take appropriate action against these buses which were plying without valid permit in their jurisdiction. All the TIs and ZOs of the respective traffic circle were taken into task by the punishing authority. Hence, the principle of equity has been followed by the punishing authority. The mandatory opportunity of written/oral defence was given to the appellants by the punishing authority and they availed the same. None of the appellants' pleas has any force.

Keeping in view the above mentioned facts, I see no reason to interfere with the impugned punishment order. Therefore, their appeals are rejected."

5. Learned counsel for the applicant vehemently submitted that the impugned penalty order and appellate order are illegal, arbitrary, unjustified, unreasonable, in violation of principles of natural justice. He further submitted that no specific allegation was pin-pointed against the applicant and what misconduct was committed by the applicant, who was posted in Karol Bagh traffic Circle as on 16.3.2002 and as such the allegations were totally vague and lacking in material particulars. Counsel also submitted that the applicant was not at fault at all since he was not posted for Traffic duty between Sultan Puri Bus Terminal and Shadipur Bus Terminal on 16.3.2012. However, counsel for the applicant has not brought to 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 officer 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. So far as contention of the applicant that no specific allegation was pin-pointed against the applicant and what misconduct was committed by the applicant is concerned, the respondents have specifically stated in the show cause notice as well as punishment order passed by the disciplinary authority against all the concerned under whose jurisdiction the alleged bus was plying with having CC permit but did not comply with permit conditions, which came into light on the basis of complaint and surveillance, which was carried on 16.3.2012 by PRG/Traffic at Sultanpuri Bus Terminal and Shadipur Bus Terminal. It was found that one bus bearing Regn. No.DL-1PB-0745 started from Sultanpuri Bas Terminal and the said bus at about 09.30 am, when it reached at Shadipur Bus Terminal it was intercepted by the PRG/Traffic and got it prosecuted and impounded through ZO/ASI Kanwal Pal Singh, No.2031/T (ZO of Patel Nagar Circle). It is not denied by the applicant that the alleged bus was not plying in his jurisdictional route but stated that the route reportedly informed by the driver of the said bus to the PRG/Traffic staff in the area of Karol Bagh Circle travelled hardly $\frac{3}{4}$ kms within his

jurisdiction. Further applicant has placed a copy of Order dated 11.12.2009 passed in OA No.1464/2009 in support of the case of the applicant. This Court perused the same and found that the same is not relevant to the facts of the present.

7. It is found that the applicant has not placed a copy of the Show Cause Notice, which was issued to him and based on which, the order dated 21.5.2013 has been passed, hence, this Court is not able to comment on it. However, in the OA in para 4.2, the applicant himself stated that 16 other officials were also issued similar Show Cause Notice. The order dated 21.5.2013 to the applicant itself states that the following four officials were issued Show Cause Notices for unauthorisedly plying of buses and having failed to take appropriate action against the same:-

1. Inspr. Jai Narain, No. D/2974 (applicant in this OA)
2. Inspr. Mahesh Narain, No.D/3132
3. SI Krishan Chand, No. 1949/D (now D/2268)
4. ASI Vidya Dhar, No. 2071/T

In this order, all the above four persons, i.e, the applicant and three other persons have been held responsible for the lapse in allowing the unauthorizedly running of buses. This shows quite clearly that the respondents have quite fairly taken action against all who they found responsible for the unauthorized plying of buses. Hence, it cannot be held that they are in any way biased against the applicant of the present OA. The respondents have taken action by following the laid down procedures and after considering the reply given by the applicant. It is noted that in the appeal against the order of punishment of censure, the applicant

in para 4 himself accepted that part of the area through which the challenged vehicle was found plying came within his jurisdiction.

8. In view of the facts of the case and for the reasons stated hereinabove 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.

9. 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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