CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 37/2013

Reserved on 07.08.2018
Pronounced on 10.08.2018

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

Const. Rakesh Kumar, Age-35 years,
PIS No. 28980594,
S/o Sh. Balbir Singh,
VPO-Baldauli, Th.-Bahadurgarh,
Haryana. … Applicant

(By Advocate : Mr.Sachin Chauhan)

VERSUS

1. Govt. of NCTD through
The Commissioner of Police, PHQ,
I.P.Estate, New Delhi.

2. The Spl. Commissioner of Police
Vigilance through Commissioner of Police,
PHQ, I.P.Estate, New Delhi.

3. The Joint Commissioner of Police,
South-Eastern Range,
Through Commissioner of Police, PHQ,
I.P.Estate, New Delhi.

4. The Addl. Dy. Commissioner of Police,
North East District,
Through Commissioner of Police, PHQ,
I.P.Estate, New Delhi. … Respondents

(By Advocate: Mrs. Harvinder Oberoi)

O R D E R

Mr. S.N.Terdal, Member (J):

Heard Shri Sachin Chauhan, counsel for the applicant and Mrs. Harvinder Oberoi, counsel for the respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

"(i) To set aside the impugned order dated 31.5.11 whereby the major punishment i.e. forfeiture of three years approved service permanently entailing proportionate reduction in his pay from 10050/- (Rs.8050/-+Grade Pay Rs.2000) to Rs.9180/- (Rs.7180/-+Grade Pay Rs.2000/-) with immediate effect is imposed upon the applicant and the suspension period to be treated as period not spent on duty for all intents and purposes at A-2 and order dated 31.10.12 whereby the appeal of the applicant is rejected by the Appellate Authority thus causing great prejudice to the applicant at A-3 and to further direct the respondents that the forfeited years of service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances. The respondents be directed to treat the entire suspension period of the applicant as spent on duty for all intents and purposes.

(ii) To set aside the finding of enquiry officer A-4.

(iii) To set aside the order of initiation of D.E dated 30.11.10 at A-1.

(iv) To set aside the order dated 15.2.11 and to further direct the respondents to remove the name of the applicant from secret list of doubtful integrity from the date of inception.

Or/and

(v) 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 a departmental enquiry was initiated against the applicant for gross misconduct, carelessness under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 on the following summary of allegation.

"It is alleged against Const. Rakesh Kumar, No.1667/NEW (PIS No. 28980594) that while posted at PS Jyoti Nagar, Delhi on 30/07/2010 he demanded and accepted Rs.1000/- from one Amit @ Sunny S/o Late Sushil Kumar Jain r/o West Jyoti Nagar, Delhi. Amit @ Sunny r/o D-558, Gali No.9, Ashok Nagar, Delhi were brought to Police Station Jyoti Nagar by Ct. Naveen Kumar, No.718/NE as both indulged in a road side quarrel opposite West Jyoti Nagar, Delhi. Ct. Naveen Kumar, No. 718/NE made them sit with SI Dayanand in his tent Ct. Rakesh Kumar, No. 1667/NE called them outside the tent, took Rs.1000/-from Amit @ Sunny and allowed them to go without the knowledge of SI Dayanand who was busy in some writing work. After an hour, both came

again at the Police Station and reported the matter to SHO/Jyoti Nagar. SHO/Jyoti Nagar paraded all the staff available in the Police Station before them but Ct.Rakesh Kumar, No.1667/NE did not participate whereas he was very much present in the Police Station. Ct. Rakesh Kumar, returned the bribed amount to Amit@ Sunny who identified him as one, who had taken money from him.

The above act on the part of Const. Rakesh Kumar, No.1667/NE amounts to gross misconduct, carelessness thus acted as unbecoming of a Police Officer which renders him liable to be dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

4. Along with summary of allegation, list of 7 witnesses, list of 7 documents were served upon the applicant. As he did not plead guilty, an Enquiry Officer was appointed and following the procedural formalities, enquiry was conducted. The Enquiry Officer following the applicable rules and the principles of natural justice conducted the enquiry and examined 6 witnesses and did not examine 7 witness and took on record the relevant document and discussed the evidence recorded in the departmental enquiry and held that the allegation levelled against the applicant was proved. The crucial portion of the discussion of the evidence is extracted below:

"The undersigned has gone through the statements of PWs recorded during the DE proceedings, the exhibits produced by the PWs and other material adduced on file and it has been established that the delinquent Const. Rakesh Kumar, No.1667/NE was remained posted at P.S.Jyoti Nagar, North-East District Delhi upto 30.07.2010 as deposed by PW-1 HC Vikash Rathi No.26/NE of SIP Branch and copy of posting record Ex.PW-1/A and PW-4 Const. Faiyaz Ahmed 2694/NE Chitha Munshi of PS Jyoti Nagar who had produced the duty roster and Roznamcha dated 30/31.07.2010 of P.S. Jyoti Nagar according to which the delinquent Const. Rakesh Kumar, was deployed for emergency duty from 8PM to 8AM vide Ex.PW-4/A and suspension report lodged vide DD No. 37-A dated 30.07.2010 Ex.PW-4/B and departure made to Distt. Line vide DD No. 38 Ex.PW-4/C. On 30.07.2010 two boys Amit @ Sunny and Sumit who were beating one cyclist on the road were brought by Const.Naveen Kumar, No. 718/NE PW-3 at P.S. Jyoti Nagar and made them sit with SI Dayanand in the tent vide Ex.PW 3/A. The version of PW-3

> Const. Naveen Kumar, was corroborated by SI Dayanand PW-2 in his deposition and both PW-2 and PW-3 had clearly established that the delinquent Const. Rakesh Kumar came in uniform and had signalled the boys to come out. Both the boys had come out from the tent and when did not come back PW-2 tried to locate but in the meantime Chitha Munshi Const. Faiyaz Ahmed had come and informed that one policeman in uniform had taken Rs.1000/- from these boys. After due enquiry both the boys were taken before the SHO PS Jyoti Nagar Inspr. Bani Singh PW-6 who had called all the staff and both the boys had identified to the delinquent Const. Rakesh Kumar who had taken Rs.1000/-from them. These facts have also admitted by the delinquent constable in his defence statement. Although PW-5 Sumit Kumar has retracted from his earlier statement but his retraction clearly indicates that the PW-5 has been win over by the delinquent. PW-6 Inspr. Bani Singh has corroborated his earlier report which has been proved s Ex.PW-6/A. He has categorically deposed that the delinquent Const. Rakesh had demanded and accepted Rs.1000/- from the boys. From the overall depositions the preponderance to probability of the guilt for taking money Rs.1000/- from the alleged boys illegally by the delinquent Const. Rakesh Kumar can not be ruled out and the acceptance of money has been proved before SHO/Jyoti Nagar Inspr. Bani Singh who had placed the delinquent under suspension vide DD No.37-A dated 30.07.2010 Ex.PW-4/B and thus the delinquent Const. Rakesh Kumar, 1667/NE has amounts to grave misconduct indulging himself in corrupt tactics which is a serious lapse on his part in the discharge of his official duties.
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> Conclusion
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> From the depositions of PWs, exhibits produced by PWs, defence statement and other material adduced on file the charge for the acceptance of Rs.1000/- from the boys illegally by Const. Rakesh Kumar, No. 1667/NE is proved fully beyond any shadow of doubt."

Copy of the enquiry report was furnished to the applicant. Thereafter, the disciplinary authority after considering the entire material and the representation made by the applicant against the enquiry report and also hearing was fixed for the applicant in Orderly Room on 27.05.2011 and 31.05.2011 but he did not avail that opportunity and did not appear in the orderly room. However, considering the entire material, the disciplinary authority passed a penalty order of forfeiture

of three years of approved service permanently entailing proportionate reduction in his pay from Rs.10050/- (Rs.8050+ Grade Pay Rs.2000/-) to Rs.9180/- (Rs.7180/- + Grade Pay Rs.2000/-) with immediate effect. The applicant preferred an appeal and the appellate authority by a detailed reasoned and speaking order after giving the applicant personal hearing in the orderly room rejected the appeal.

5. Counsel for the applicant vehemently and strenuously submitted that one witness PW-7 who has not been examined is a very crucial witness, namely, complainant and his non examination is fatal and the enquiry report requires to be set aside. He further submitted that there is violation of Rule 15(3) and Rule 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980. But, however, when we have perused the entire enquiry report, it is crystal clear that there is no violation of the above said provisions of the Delhi Police (Punishment & Appeal) Rules, 1980 and non examination of PW-7, the complainant is not fatal to the enquiry report. Indeed as extracted above, the enquiry officer considered the evidence recorded by him in totality and came to a reasonable conclusion that the allegation levelled against the applicant is proved. Counsel for the applicant has drawn our attention to the judgment dated 27.10.1999 of the Hon'ble Supreme in the case of **Hardwari Lal** Vs. **State of UP & Ors**. In this case, the Hon'ble Supreme Court has not laid down any law but, however, in view of the facts and circumstances available in that case held that non-examination of 2 important witnesses is fatal to the departmental enquiry. But, however, the facts available in the present case, as elaborated above, are totally different. The counsel for applicant further relied on an order dated 20.02.2010 passed by this Tribunal in

the case of **Ct. Krishan Kumar** Vs. **Govt. of NCT of Delhi and Ors.** In that case, the Enquiry Officer came to the conclusion that the charges were not proved, whereas in the present case, the Enquiry Officer came to the conclusion that the charges are proved, as such the said case cannot be relied upon. He further relied upon the judgments of Hon'ble Supreme Court in **Commissioner of Police, Delhi & Ors.** Vs. **Jai Bhagwan** (Civil Appeal No. 4213/2011) and **Vijay Singh** Vs. **Union of India & Ors** (Appeal (Civil) 7212/2005). In both these cases, the penalty order was dismissal from service and moreover no general law has been laid down in those cases, whereas in the present case, the penalty imposed is only for forfeiture of 3 years approved service permanently. Regarding 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:-

(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:-

> "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.
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> 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;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> i. the finding of fact is based on no evidence."

6. In view of the law laid down by the Hon'ble Supreme Court, referred to above and in view of the facts and circumstances of this case, the OA is devoid of merit.

7. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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