

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1059 /2013

Reserved on 14.08.2018
Pronounced on 24.08.2018

Hon'ble Mr. K.N.Shrivastava, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Sh.Pawan Kumar,
S/o Sh. Shyam Singh,
R/o House No.334-A/5, Prem Nagar,
Delhi-110094

... Applicant

(By Advocate: Mr. A.K.Behra)

VERSUS

Govt. of NCT of Delhi & Others through

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, IP Estate,
New Delhi-110002.
2. The Secretary of Education,
Govt. of NCT of Delhi, Old Secretariat,
Delhi-110054
3. The Director,
Directorate of Education,
Govt. of NCT of Delhi, Old Secretariat,
Delhi-110054
4. The Deputy Director of Education,
North-East, Yamuna Vihar
Delhi-110053
5. The Principal,
Govt. Boys. Sr.Sec.School Dayalpur,
Delhi-110094.

... Respondents

(By Advocate Mr. Anil Singal for Ms. P.K.Gupta)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

Heard Mr.A.K.Behra, counsel for applicant and Mr.Anil Singal for Ms. P.K.Gupta, counsel for 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 quash and set aside the impugned orders dated 30.03.2012, 8.9.2010 and 4.6.2010;
- (ii) To quash and set aside the disciplinary proceedings initiated against the Applicant vide Memorandum dated 22.5.03;
- (iii) To reinstate the applicant in service with all consequential benefits;
- (iv) Any further order/relief this Hon’ble Tribunal deem fit and proper in the facts and circumstances narrated herein above may also be passed in favour of Applicant and against the respondent.”

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant by issuing charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 for the following article of charges vide order dated 23.05.2003.

“Article-1

That Sh.Pawan Kumar, TGT (Maths.), Govt. Boys Sr.Sec. School, Dayalpur, Delhi while furnishing the attestation form on 13.1.1998 gave false information about his character and antecedents at S.No.12 (b) in the attestation form by mentioning that ‘No’ case is pending against him in any Court of Law, whereas a case under various acts of Indian Railways Rules/IPC was pending in the Court of Upper Session Judge, Meerut, U.P. vide No. 2463/95 in which the said Sh. Pawan Kumar was one of the accused. Though the case was later on acquitted on technical ground on 30.1.2001, but deliberately suppressing the said material information at the time of joining by Sh. Pawan Kumar, TGT (Maths.) shows his doubtful integrity, incompetent to be a Govt. servant.

Article-II

That the said Sh.Pawan Kumar, TGT (Maths) despite being a bonafide resident of Ward No.10, House No. 226, Aggarwal Mandi, Tatiri, Distt. Bagpat, UP and to this act, Sh.Pawan Kumar’s and his wife’s names were incorporated in the electoral list of Nagar Pachayat for the year, 1995, 1999 and for the year 2000, misrepresented himself by including his name in the Ration Card No.176161 issued in favour of his brother Sh.Rajveer Singh, R/o 334/5, Prem Nagar, Delhi and by this means, Sh. Pawan Kumar, TGT (Maths) secured an OBC Certificate from the office of S.D.M. Delhi on 14.10.1997. Thus, the said act again shows his doubtful integrity incompetent to be a Government servant.

Article-III

That the aforesaid Sh. Pawan Kumar, TGT (Maths.) while retaining his privileges being an electorate as per the voters list for the year 1995, 1999 and 2000 in Ward No. 10, Aggarwal Mandi, Tatiri, Distt. Bagpat, U.P. managed to prepare another Electoral Identity Card, DL/04/052/330610 in another address, i.e. 19, Prem Nagar, Delhi on 9.4.1995. The aforesaid act of enjoying the privileges of an electorate in more than one place anywhere in India is a sheer violation of the instructions of Election Commission of India which is known to every law abiding citizen of the Country. By these kind of acts of violating the rules of the land in a wicked manner, Sh. Pawan Kumar has exhibited himself as a person of doubtful integrity, incompetent to be a Govt. servant.

Thus by indulging into the aforesaid misconduct, Sh. Pawan Kumar, TGT (Maths.) violated Rule 3 of CCS (Conduct) Rules, 1964."

Along with the charge sheet, statement of imputation of misconduct, list of documents and list of witnesses were furnished to the applicant, as required under the rules. Thereafter, as per rules, an Inquiry Officer was appointed. The Inquiry Officer following the relevant procedural rules conducted the enquiry and providing the applicant reasonable opportunity to defend his case and thereafter submitted the enquiry report on 17.12.2004 holding that all the three charges levelled against the applicant stood proved. Inquiry report was furnished to the applicant and he also submitted his representation against the inquiry report on 22.12.2004. After carefully considering the inquiry report and the representation, the disciplinary authority held that in view of the charges levelled against the applicant and they having been established in the departmental enquiry, the applicant rendered himself unfit for appointment and hence impose the penalty of dismissal from service. The appeal preferred by the applicant was also dismissed by the appellate authority vide letter dated 8.09.2010. The

Revision preferred by the applicant was also dismissed by the Revisional Authority vide letter dated 30.03.2012.

4. At the time of hearing, counsel for the applicant, fairly submitted with respect to article of charge no.1 that he had not furnished the correct information in the attestation form on 13.1.1998 with respect to serial no. 12 (b) in the attestation form. He admits that he had mentioned "No" with respect to pendency of any case against him in the Court of Law. Though a case (Session Revision No.2463/1995 **State** versus **Hukum Singh & Ors.**) was pending against him in the Court, as stated in the Article of charge no.1. But, however, he submits that the case was only with respect to being in a crowd and saying slogans and as such it is a petty or trivial offence. As such, in view of the law laid down by the Hon'ble Supreme Court in the case of **Avtar Singh Vs. Union of India and Others** (2016) 8 SCC 471), particularly in para 38.4.1, the respondent, namely, the disciplinary authority, appellate authority and the revisional authority should have exercised discretion and ignore the suppression of fact or of giving false information by condoning the lapse and should have exonerated the applicant. The said para 38.4.1 is extracted below:-

"38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse."

But, however, from the perusal of the judgment dated 30.01.2001 in the above stated case i.e. Revision No. 2463/1995 in the case of **State**

Vs. **Hukum Singh & Ors** under Section 147/148/268/341/342/150/151/152/ 153/154 of Indian Railway Act, P.S. Baghpat, the accusation made against the applicant along with several accused was that the applicant was involved in the case where the allegations were that in a group he was damaging the wire of Railway crossing, struck off the rails, broke the gate liver and signals, stopped the truck which was passing nearby, sat down on the railway crossing, bet the railway employees and thus interrupted the work of Government. The allegation as recorded in the judgment dated 30.01.2001 passed by the VIII learned Additional Session Judge, Meerut is extracted below:

"Witness No.1: Yash Pal Singh said that on 3.3.1991 he was posted to PS Baghpat Chowki Tatri, many people I am the Railway Crossing and stopped the way. Many people break down the wire of railway crossing and took off the keys of the rails. The information of this has been given by Munesh Kumar on the basis of which a case has been lodged against this. The witness has proved the scene in his report A-1. This witness has proved to chick Constable No.4A/1, 2, 3 Rojmancha is A-3 Aam Rojman cha. During argument this witness said that he did not know the accused. He did not know the names of persons in FIR. There were crowd of 200-300 peoples. Munesh reached later. No arrest has been made. He said that he did not know either they are there or not.

Prosecution did not present other witness except the abovesaid. In the above said evidence, it is not clear that the accused involved in this case or not. Hence, the evidence did not prove their presence in the case. The accused are able to get rid off from the case.

ORDER

Accused Hukam Singh, Bhagmal Pawan, Prem Singh, Dharm Singh, Prathvi, Khajan, Prehlad, Surendra, Pramod, Naresh, Jai Bhagwan, Dev Kumar, Satya Pal, Veer Sen, Pratap Singh, Sita Ram, Suresh and Amar Singh are acquitted from the allegation under Section 147/148/268/341/342 IPC & U/S 150/151/152 /153/154 Indian Railway Act, P.S. Baghpat. All accused are on bail. There bail bond & security are hereby discharge.

Dated 30.1.2001.

Sd/-
B.L.Yadav
VIIIth Additional Session Judge,
Meerut."

5. The Inquiry Officer as well as the disciplinary authority also while dealing with the article of charge no.1 recorded thus:

"I have carefully gone through all the volumes containing documents/record pertaining to the D/P, against Sh.Pawan Kumar, TGT, Maths.

FIR No.2463/954 was lodged against Shri Pawan Kumar & others in P.S.Bagpat (UP) u/s 147, 148, 149, 268, 341, 342 of the IPC and Sections 150 to 154 of the Indian Railways Act for removing bolts from the railway track, causing extensive damage to Railway Property on 03.03.1991, interrupting govt. work, indulging in violence & vandalism, beating up Railway employees etc. Besides this, in another case (FIR No. 1442/91 dated 03.03.91 P.S. Bagpat) the same teacher was arrested by UP Police and he remained in custody between 4/9/91 to 5/9/91. As per his own statement dated 29-02.2008, addressed to ADE (Vig.) a charge sheet was also filed against him by the Police in this case."

6. From the allegations recorded in the above extract, it cannot be said that the applicant was involved a case of trivial nature. Further one more aspect is that the departmental enquiry was held and the enquiry report was submitted on 17.12.2004 and the disciplinary authority passed the penalty order in 2010. The appellate order is also passed in 2010 and the revision order is also passed in 2012. Whereas, the law laid down by the Hon'ble Supreme Court in the said case of **Avtar Singh** (supra) is of the year 2016. In the circumstances, as submitted by the counsel for respondents, the law laid down by the Hon'ble Supreme Court can be operative only prospectively and as such the findings and the impugned order of penalty upto the revisional order referred to above which are all before 2012 cannot be faulted. Further in conditions no 1 to 3 of the attestation form with respect to which he had given alleged false information, it is specifically stated that furnishing any false

information would disqualify the candidate and if the said factual information is found to be false later they would be terminated. The said three conditions are extracted below:-

- "1. The furnishing of false information or suppression of any factual in the Attestation Form would be a disqualification and is likely to render unfit for employment under the Govt.
2. If detained convicted, debarred etc, subsequent to the completion and submission of this form. The detail should be communicated, immediately to Department, failing which it will be deemed to be suppression of factual information.
3. If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation form comes to the notice at any time during the services of a person his/her services will be terminated."

In view of the facts and circumstances discussed above the finding of the inquiry officer, the penalty passed by the disciplinary authority, and the orders passed in appeal and revision with respect to article-1 cannot be faulted.

7. In so far as the article of charge no. 2 is concerned, counsel for the applicant vehemently submitted that he had submitted an application on 10.11.1995 to the Nagar Panchayat of his village in UP Bagpat for removing his name from the Nagar Panchayat list as well as Voter list. Vide letter dated 28.04.2001, the Tehsildar of Bagpat in UP had submitted a report to the SDM, Bagpat wherein he has stated that the name of the applicant had been removed from the electoral roll of concerned Nagar Panchayat. When we scrutinized the enquiry report, the inquiry officer had considered the submission of the applicant that in the supplementary voter list for the year 2000 of the concerned

village of Bagpat, UP, the name of applicant was deleted from the voter list. The relevant portion of the inquiry report is reproduced below:

"As regards the article No.II the P.O has contended that since the name of the official appear in the voted list for the year 95, 99, 2000 of ward No. 10 of House No. 226 Aggarwal Market Tatiri, Distt. Baghpat, U.P. the official has got his name included in Ration Card No. 176161 of his brother Rajveer Singh R/o 334/5, Prem Nagar Delhi and after getting his name included in said Ration Card, he has secured OBC Certificate from the office of S D M Delhi on 14/10/96, the official he contended that the document placed on Record i.e. OBC Certificate issued by S D M Office, Delhi cannot be read against him as no prosecution witness has verified the content of the document. The official has further contended that as per the Law and Rule of F S Deptt. Govt. Delhi, there is no bar that permanently one has to leave his ancestral place and his family can live with his parents & his family also can remain reside with his brother. He has also further contended that only Ration is to be discontinued if some can leave the residence for move then specific period & the official has tried to justify his act of only giving one address of Delhi not only in Ration Card attestation form and affidavit before SDM for issuance of OBC Certificate. The said stand of the official is nothing but a figment of his imagination and to side track the issue as according to the voter list 95, 99 and 2000, the name of the official appear in the voter list of ward No.10, Aggarwal Mandi Tatiri, Distt. Baghpat U.P. being a bonafide resident of ward no.10, Aggarwal Mandi Tattri Distt. Baghpat U.P. When the official has acquired educational qualification from 1981 to 1996 in UP. The only influence that could be drawn as the official managed to obtain a OBC Certificate from the office of S D M Delhi on 14/10/96 after getting the name included in the voter list at Delhi and getting Photo Identity Card on 9/4/95. When he was already having a Ration Card No. 70866 at his native place and his signature also appear in the Relevant Register of U.P.Govt. The official has placed on Record, a copy of the supplementary voter list for the year 2000 of ward No. 10, Tattri, Baghpat U.P. according to which his name was deleted from the voter list. The said document further strengthen the case of the Deptt. that at the time of inclusion of his name in the Ration Card No. 176161 of his brother at Delhi address Rajveer Singh 334/5 Prem Nagar Delhi on 6/12/96 and securing OBC Certificate on 14/10/96, he was bonafide residence of Baghpat U.P. He got Photo Identity Card at Delhi Address on 9/4/95 by representation and has after getting his name included in the Ration Card of his brother on 6/12/96, when his name was already appearing in the voter-list of year 95, 99 & 2000 at Baghpat U.P. & was also having Ration Card No. 70866 as his native place in Baghpat U.P as per the copy of page No.30 of the Register where the signature of official also appear. The stand of the official that he has obtained the OBC Certificate from the

office of SDM Delhi after completing legal formalities and verification by SDM office also appear to be not based on strong footing as on the face of documentary evidence available on Record, the official has got included his name in the Ration Card of his brother at Delhi and managed to secure OBC Certificate from SDM office Delhi on 14/10/96 by misrepresenting himself as bonafide Residence of Delhi on the basis of election I/Card obtain by getting his name enter in the voter list on 14/10/96."

8. The counsel for the applicant vehemently and strenuously submitted that on the basis of the enquiry held by the SDM, Seelampur with respect to the OBC Certificate issued to the applicant and the consequent report submitted by the said SDM to Deputy Commissioner (North East) which was furnished to him in response to his RTI application, vide letter dated 04.03.2009, that his OBC Certificate cannot be questioned by the enquiry officer in the departmental enquiry. With respect to the said contention, the disciplinary authority before taking decision in the departmental enquiry after the receipt of enquiry report in 2004 in the departmental enquiry further enquired about the same for nearly five years regarding the genuineness of OBC Certificate. The disciplinary authority after giving personal hearing to the applicant recorded that the Deputy Commissioner (NE) and the OBC Commission gave clarification. Considering the said reports of the Deputy Commissioner (NE) and OBC Commission, the disciplinary authority came to the conclusion that there is a misrepresentation on the part of the applicant in obtaining the OBC Certificate. The relevant portion of the order of the disciplinary authority is extracted below:

"After the due procedure, the enquiry officer concluded (IR dated 14.12.2004) that all the three articles of charge stood proved. In his reply against the Inquiry Report dated 22.12.2004 the C.O. expressed his dissatisfaction about the procedure adopted by the IO and demanded a Re-enquiry. Not satisfied with his reply, he then DE gave an opportunity of Personal Hearing on 09.03.2005 to the C.O. But he did not bring any new fact to the notice of the HoD.

Since 2004, the Department has wasted more than five years in writing to the SDM Seelampur and DC (NE) offices to enquire into the issuance of OBC Certificate produced by Shri Pawan Kumar. Right from ADE(Vig.) to Secretary (Education)- the entire hierarchy of the Department have repeatedly written to these offices to give their final findings about the case. Vide his letter no. 428 dated 05.05.2005, the then Dy. Commissioner (North East) apprised this Department as under:

"All records pertaining to the issue of OBC Certificate are missing from the office. It seems, the SDM office in connivance with the said Mr. Pawan Kumar have taken out the official records. An enquiry in this regard is underway."

On further enquiry by this office, the Dy. Commissioner (NE) Office vide their letter no. 803 dated 08.09.05 revealed as under:

"On the basis of the information received from the Railway Authorities, prima facie it appears that the OBC Certificate has been issued on false recommendation/documents.....the concerned file in the SDM office is reported to be missing. The collusion of Mr. Pawan Kumar with staff of SDM Office in removing the records cannot be ruled out."

On 10.08.06, SDM Seelampur wrote to ADE(Vig.) that there is a court case also pending in the matter of verification of the caste 'Raya Tanwar' in the court of Shri Siddharth Sharma, MM Room No. 149, Tis Hazari Court. Meanwhile, the suspension of the employee was revoked vide order no. 5289 on 18.12.08 without prejudice to the outcome of the D/P. On 17.01.2009, vide DO letter no. PS/SE/2009/02 dated 07.01.2009, Secretary Education wrote to Dy. Commissioner NE that on 09.04.2008 ADE (NE) had informed that enquiry into the matter is under active progress and an outcome is likely by June 2008. However, despite the lapse of more than two years, no information has been provided. She further clarified that the issue under consideration is not whether the said OBC Certificate was issued or not but rather whether it was issued in accordance with rules without misrepresentation of facts.

Finally, Dy. Commr. North East in his reply to the D.O. letter sent by Secretary (Education) reported (his letter no. 1840 dated 17.01.09) as under:

"The records available in this office show that Shri Pawan Kumar is originally a resident of U.P. and he belongs to 'Rava Rajput' community and he has not denied this fact but he has claimed that 'Rava Rajput' and 'Raya Tanwar' is one and the same community."

The office has sought for a clarification from the OBC Commission vide letter No. F.16/DC/NE/Vig./08/10/1136 dated 21.10.2008 (copy enclosed) with reference to which the OBC Commission has vide their letter No.F.2(23)/BCC/2005/1902 dated 25.11.08 (photocopy enclosed) has informed that in the Socio-Economic Survey Report on the basis of which 'Raya Tanwar' caste was included in OBC list, there is no reference to sub name or sub caste side by side of 'Raya Tanwar'. The recommendation of Govt. regarding addition of sub name of 'Raya Tanwar' in OBC List has not been accepted and notified by the Government of Delhi. This clearly indicates that 'Rava Tanwar' community has not been included in Delhi OBC caste list as yet.

Facts of the case show that the OBC certificate issued by SDM Seelampur to Sh.Pawan Kumar for the community 'Raya Tanwar' was issued because of misrepresentation of facts by Shri Pawan Kumar regarding his caste."

After this detailed clarification by different authorities, namely DC (NE) and OBC Commission, there is hardly any doubt that Shri Pawan Kumar misrepresented facts to obtain OBC Certificate on the basis of which he got a government job...."

Moreover, the aforesaid report of the SDM Seelampur which was furnished to the applicant vide letter dated 04.03.2009 is not a part of the enquiry report of the inquiry officer holding departmental enquiry. As such the said document cannot be taken into account at this stage. Further it is the matter of evaluation of the evidence available in the inquiry proceedings by the enquiry officer. We do not find any reason to interfere in the said findings, as it is based on the documentary and oral evidence before the enquiry officer.

9. In so far as article of charge no. 3 is concerned, it is matter of evaluation of evidence by the inquiry officer. As held by the Hon'ble Supreme Court in catena of judgments that the Tribunal should be slow in reassessing the evidence.

10. The counsel for the applicant has not brought to our notice violations of any procedural rules in the departmental enquiry. In so far as the scope of the 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 officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise 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 or 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 reappraise 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."

11. In view of the facts and circumstances narrated above and in view of the law laid down by the Hon'ble Supreme Court, referred to above, as none of the conditions enumerated in the case of Gunasekaran (supra) are met, there is no merit in the OA.

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

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

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