CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3272/2013

Reserved on 07.09.2018
Pronounced on 13.09.2018

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

Jawahar Singh, D-2547
PIS No. 28790627
S/o Late Sh. Mahavir Singh,
Ex. SHO P.S. Mahendra Park,
R/o-B-2/74, GF Sector-16,
Rohini, Delhi-85. … Applicant

(By Advocate Shri Sachin Chauhan)

VERSUS

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

2. The Joint Commissioner of Police,
Northern Range through
Commissioner of Police.
PHQ, I.P. Estate, New Delhi.

3. The Deputy Commissioner of Police,
North-West District,
Through
Commissioner of Police.
PHQ, I.P. Estate, New Delhi. … Respondents

By Advocate: Mrs.Sangita Rai)

O R D E R

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

Heard Mr. Sachin Chauhan, counsel for applicant and Mrs. Sangita Rai, counsel for respondents, perused the pleadings and all the judgments produced by both the parties.

2. The applicant has prayed for the following reliefs:

> "(i) To quash and set aside the show cause notice at Annexure A-1, order of punishment of censure at annexure A-2 and order of appellate authority at annexure A-3 with all consequential benefits including seniority and promotion and pay and allowances.
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> (ii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

3. The relevant facts of the case are that vide order dated 14.08.2010 a Show Cause Notice (SCN) was issued to the applicant by the disciplinary authority , namely, the Deputy Commissioner of Police, North West District, Delhi for failure to keep close watch over the activities of his subordinate staff as the said subordinate staff, namely, the Division and Beat Staff were in complicity with the owner, namely, Gaurav Yadav and thereby permitted him to run video games without license in his premises by installing 5 video games machines in his premises. The said SCN is extracted below:

> "On 24.7.2010, a PCR call vide DD No. 93-B at 3.57PM was received at PS Mahindra Park alleging that 8/10 boys had looted money at the point of pistol from 3 /4 boys in the area Sarai Pipal Thalla neat Tyagi Hospital. On receipt of the same, the PCR Staff as well as local police reached the spot and a case FIR No. 174 dated 24.7.2010 u/s 395/397/120-B IPC and 27 A. Act was registered on the statement of one Gaurav Yadav S/o Sh. Raj Kumar R/o A-31, Panchawati, Adarash Nagar, Delhi. The motive of Dacoity was to loot the stake money as well as the huge amount being carried by the gamblers. At the time of dacoity 6 persons including the complainant were playing cards inside a cabin in H.No.212, Sarai Pipal Thala and stake money was lying on the floor. In this case 4 accused were arrested with the part of looted money, other articles and weapons used in the commission of crime.
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> After that ACP/Shalimar Bagh visited the spot and found that 5 machines of Video Games were running as a Video parlour in H.No. 212, Sarai Pipal Thala, on main G.T.K.Road, Delhi owned by Mr. Gaurav Yadav. On entry in the premises, only one chair and table exists as a Counter with a board displaying Yadav Tours and Travels. It is a

two side open and a cross way building. After that there is another room Air Conditioner fitted adjacent to this Video Parlour in which a "Gambling Den" used to be running by the owner Mr. Gaurav yadav. People have free entry from front side of the video parlour and as well as from back side. After that there is an open space being used as a kitchen for the preparation of non-veg. and serving of liquor to the prospective customers of gambling. The Darri/Gadda was found lying in that room and playing cards were found scattered. The circumstances suggested that the gambling through playing cards was taking place there since long.

On verification, no license was found for running Video Games in that premises by the owner Gaurav Yadav. The premises falls on the main service road and has a cross way. The activities going on inside, can easily been seen from outside.

The Division and Beat Staff had failed to collect intelligence regarding the running of gambling den though the Beat Staff used to visit these premises from time to time. It cannot be presumed that the running of 5 Video Games machines without license and illegal activities of gambling inside this building were not in the knowledge of Beat Staff. Their complicity in this illegal act cannot be ruled out. The above incident clearly shows that the supervisory Officer i.e. SHO/Mahendra Park failed to keep effective watch/control on the subordinate staff in doing such type of illegal activities.

The above act amounts to gross negligence and failure to keep close watch over the activities of his subordinate staff, on the part of Inspr. Jawahar Singh, SHO/Mahendra Park.

He is, therefore, called upon to show cause as to why a departmental action should not be initiated against him for his above said lapse. His reply, if any, should reach the undersigned within 15 days from the date of receipt of this notice failing which it will be presumed that he has nothing to say in his defence and the case will be decided ex-parte on its merits."

The applicant submitted reply to the SCN.

4. After considering the reply to the SCN, the disciplinary authority imposed a penalty of 'Censure' vide order dated 09.02.2011. The relevant portion of the said order is reproduced below.

"The above said Show cause notice was served upon the Inspector on 26.10.2000 against his proper receipt and he submitted his reply to the said show cause notice on 3.11.2010. In his reply, he has stated that no gambling den was being run at the premises at H.No.212, Sarai Pipal Thala. However, there was an office of Yadav Tour and Travel on the ground floor of the house. Besides the Tour & Travel Office, a video parlour was also being run in the same premises. When it came to notice that the video parlour was being run without license, the owner of the premises Gaurav Yadav was prosecuted u/s 28/112 D.P.Act and the video parlour was got closed under the order of Court. It also came to light that Beat Staff were visiting these premises but they did not bring these facts to the notice of the senior officers. A report was sent against them and they were placed under suspension and Departmental action is being taken against them. It has further pleaded by the Inspector that there was no any complaint from the residents of the area regarding running this video parlour, as there was no nuisance. As such there was no lapse on his part.

I have gone through the contents of the S.C.N. reply to the S.C.N. submitted by Inspector as well as other available record on the file and it has been found that ACP/S.Bagh had submitted his report that on checking of the spot, the circumstances suggested that the gambling through playing cards was talking place there since long and on further verification, no license was found for running Video Games in that premises by the owner Gaurav Yadav. The premises falls on the main service road and has a cross way. The activities going on inside, can easily been seen from outside. As such it is apparent that being SHO, the Inspector is the Chief Supervisory Officer and he is fully responsible of the efficiency, activities, good conduct and performing of good quality duties of all the subordinates of his police station, for the preservation of peace and the prevention and detention of crime. But the Inspector being SHO has failed to do so at all and also failed to exercise the effective control over the crime resulting which an illegal Gambling Den/Video parlour was running in the jurisdiction of the area and he also prosecuted the owner of the Video parlour after the checking of the spot by ACP/Shalimar Bagh. Moreover, despite of directions, the Inspector also did not appeared before the undersigned. As such the pleas taken by the Inspector are not acceptable. In view of the above, the show cause notice issued to him is hereby confirmed and as such his conduct is censured for his above said lapse.

Let a copy of this order be given to Inspr. Jawahar Lal, No.D/2574 (PIS No. 28790627) free of cost. He can file appeal to the Joint C.P./N.R., Delhi against this order within 30 days from the date of its receipt by enclosing a copy of this order, if he so desires."

The Applicant preferred an appeal. The appellate authority after considering his appeal and also after hearing him personally in orderly room 11.09.2012 rejected his appeal vide order dated 25.09.2011. The relevant portion of the appellate authority is extracted below:

> "Inspr. Jawahar Singh, No. D-2574 appeared in OR on 11.09.2012. During the OR the appellant repeated the same pleas what he has already narrated in his written appeal except that running of gambling den in a home was beyond his knowledge and as such he could not initiate measures to prevent the same. The submission of the appellant can not be relied upon. Since he was the SHO of the area it was his duty to see that all illegal activities carried out in the area of the police station are stopped. In view of the above, I have no hesitation to say that the punishment awarded by the disciplinary authority required no interference and hence the appeal is rejected."

5. The counsel for the appellant vehemently submitted that the impugned SCN, 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 Beat Staff, who were alleged to be in connivance with the said Gaurava Yadav the owner of the premises were not dealt with departmentally whereas the applicant has been proceeded against in the above said department proceedings. But, however, from the close scrutiny of the penalty order dated 09.02.2011 it is clear that the said beat staff were placed under suspension and departmental action were initiated against them. The counsel for the applicant has not brought to our notice any violation of procedural rules in the above said departmental proceedings. 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.
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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.
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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;

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 alleged, there is no merit in the OA.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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