CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1936/2013

Reserved on 10.12.2018
Pronounced on 03.01.2019

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

Sh.Bal Kishan,
S/o Late Sh. Samshu Ram,
R/o Q.No.2, Police Station,
Samaipur Badli, Sector 19,
Rohini, Delhi. … Applicant

(By Advocate Shri Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building, IP Estate,
New Delhi.

2. Jt. Commissioner of Police
(Northern Range)
PHQ, MSO Building, IP Estate,
New Delhi.

3. Deputy Commissioner of Police
North-West Distt, P.S. Ashok Vihar,
Delhi. ... Respondents

(By Advocate Mrs. Harvinder Oberoi)

O R D E R

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

We have heard Mr. Ajesh Luthra, counsel for applicant and Mrs. Harvinder Oberoi, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

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

"(a). quash and set aside impugned orders/action of the respondents and

(b) direct the respondents to accord all consequential benefits including monetary, seniority and promotion.

(c) award costs of the proceedings and

(d) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

3. The relevant facts of the case are that on the allegation of extortion a summary of allegation was served on the applicant with a view to initiate departmental enquiry. The detail summary of allegation is as follows:-

> "It has been alleged against ASI Dina Nath No. 2956/D (PIS No. 28590174), ASI (Driver) Hawa Singh No. 5901/PCR (PIS No. 28741038) and Constable Bal Kishan No. 2663/PCR (PIS No. 28883519) that one Dhruv Singh S/o Hari Singh R/o E-593/594, Jahangir Puri, Delhi made a complaint to DCP/PCR on 4.5.98 that on the night of 2.5.98 at about 11.00PM he alongwith his friend Sh.Vinod Kumar was going to his home, when he reached near Partap Nagar a PCR van No. DL-IA-0826 stopped him and required his driving licence and other documents of scooter which were produced by him at once but PCR staff threatened him to put him in lock-up and depositing his scooter being stolen vehicle. The PCR Van staff conducted his search removed driving licence and Rs.1900/- from his pocket. On this complaint a P.E was conducted by Sh. S.S.Dahiya ACP/North Zone/PCR. During course of enquiry the allegation leveled by the complaint were established. The staff of PCR Van No. DL-IA-0826 i.e. ASI Dina Nath No. 2956/D, ASI (Driver) Hawa Singh No. 5901/PCR and Const. Bal Kishan No. 2663/PCR were found guilty of extortion.
>
> It is further alleged that all the 3 above officials visited the complainant house on 4.5.98 and they returned his driving licence to his brother Manu Singh and they again met the complainant at 12.30AM and requested to withdraw his complaint and only then they will return Rs.1900/-. In this regard a case FIR No. 68 dated 6.5.98 u/s 384/34 IPC was registered at PS-Partap Nagar Delhi.
>
> The above act on the part of ASI Dina Nath No. 2956/D ASI (Driver) Hawa Singh No.5901/PCR and Const. Bal Kishan No. 2663/PCR amounts to gross misconduct including in corrupt activities, dereliction in official duty and unbecoming of a Govt. servant which renders them liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

4. Along with the summary of allegation, list of witnesses and list of documents were furnished to the applicant and as the applicant did not admit the summary of allegation, a departmental enquiry was held and following the principles of natural justice and the relevant procedural rules for conducting the departmental enquiry, the Inquiry Officer after examining PW1 to PW5 and DW1 to DW3 and after discussing the evidence and defence statement came to the conclusion that the charge leveled against the applicant stood substantiated vide order dated 14.06.1999. With respect to the same charges, a criminal case was instituted and in the criminal case the complainant did not enter the witness box to depose before the Court and ultimately the applicant was acquitted. Whereas the complainant Shri Dhruv Singh had deposed before the Inquiry Officer. Inquiry report was furnished to the applicant. The applicant filed representation against the inquiry report and he pleaded that as he was acquitted by the Criminal Court, under Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, no punishment should be imposed on him. After considering the provisions of Rule 12 also along with other material before the disciplinary authority, the disciplinary authority imposed a penalty of forfeiture of two years approved service permanently with cumulative effect on the applicant vide order dated 2.09.2011. The appeal filed by the applicant was also considered by the appellate authority and after hearing him in orderly room on 12.10.2012 dismissed the appeal vide order dated 22.10.2012.

5. The counsel for the applicant vehemently and strenuously urged that rule 12 of the said rules is squarely applicable in the present case.

The complainant was cited as a witness in the criminal case before the Criminal Court but he did not enter the witness box to depose and ultimately the Criminal Court acquitted the applicant. As such, the counsel for the applicant submitted that under rule 12, no punishment should have been imposed by the disciplinary authority on the applicant.

6. We have perused the order passed by the disciplinary authority along with the entire material before the inquiry officer and the reasoning given by the disciplinary authority. As stated above, though the complainant has not entered the witness box in criminal Court, he deposed before the inquiry officer. As such in view of proper interpretation of rule 12 of the said rule, it is crystal clear that the reasoning given by the disciplinary authority cannot be faulted.

7. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(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.

> 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."

8. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the OA requires to be dismissed.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

'sk'

…