

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2822/2017

Reserved on: 06.05.2019
Pronounced on: 08.05.2019

Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Baljeet Singh (Ex-Constable)
 Age-57, Group 'C'
 No.273/DAP (PIS No. 28000035)
 S/o Sh. Suraj Bhan,
 R/o Village 7, PO- Gubhana,
 Distt. Jhajjar, PS-Sadar Bahadurgarh,
 Haryana.

... Applicant

(By Advocate: Mr. Sahil Mongia)

VERSUS

1. Commissioner of Police,
 Police Headquarters, MSO Building,
 I.P. Estate, New Delhi-110001.
2. Joint Commissioner of Police,
 (Armed Police) Administrative Block,
 New Police Lines, Kingsway Camp,
 New Delhi-110009.
3. Deputy Commissioner of Police
 Ist Bn. Delhi Armed Police,
 Kingsway Camp,
 New Delhi-110009.
4. Bhagwati Prasad, Insp./Enquiry Officer
 CC/J Company/CPR,
 Ist Bn. Delhi Armed Police,
 Kingsway Camp, New Delhi-110009.
5. Rajeev Shah, Insp/2nd Enquiry Officer
 Reserve Inspector-1,
 Ist Bn. Delhi Armed Police,
 Kingsway Camp, New Delhi-110009.
6. Sh. Baleshwar Singh, Retd. Inspector
 Defence Assistant of the Applicant,
 House No.380/C, Kidwai Gali,
 Chajjupur, New Delhi-110094. ... Respondents

(By Advocate: Ms.Sumedha Sharma)

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

We have heard Mr. Sahil Mongia, counsel for applicant and Ms. Sumedha Sharma, 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:

- "1. Set aside the Order dated 19.07.2013 passed by the Respondent N.3 (then) initiating Departmental Enquiry against the Applicant;
2. Set aside the Departmental Enquiry conducted by the respective EO's as also the Findings dated 25.05.2016 passed by the Respondent No.5;
3. Set aside the Order dated 03.11.2016 passed by the Respondent No.3 whereby punishment of Removal from service was awarded to the Applicant;
4. Set aside the Order dated 28.04.2017 passed by the Respondent No.2 whereby Departmental Appeal of the Applicant against the order dated 03.11.2016 was also dismissed;
5. Reinstate the Applicant into service;
6. Direct the Respondents to treat the suspension period of the Applicant from 18.04.2002 to 04.11.2005 and 24.01.2008 till 03.11.2016 be treated as "period spent on duty" for all intents and purposes;
7. Suitable cost(s) be awarded to the applicant;
8. Any other relief(s) as deemed fit in the facts and circumstances of the present case in favor of the applicant."

3. The relevant facts of the case are that on the allegation that applicant committed sexual intercourse with the complainant one Ms. Preeta against her wishes and against her consent etc, a departmental action was initiated against the applicant. The detailed summary of allegations is as follows:-

"It is alleged against Constable(Dvr.)Baljeet Singh, No. 1304/T, 273/DAP (PIS No. 28000035) that one Ms. Preeta D/o Sh.Ram Phal R/o Vill. Mandora, who is daughter of Sister-in law of Ct.(Dvr.) Baljeet Singh was working as LIC agent since June/July 2001 and residing at the house of Ct.

(Dvr.) Baljeet Singh at Vill. Gubhana, Tehsil Bahadurgarh, who happened to be her Mausa. On the night intervening 6/7.04.2002 Ct.(Dvr.) Baljeet Singh committed rape with the complainant Ms. Preeta against her wishes and consent and she reported the matter to her Mausi, Susheela i.e., wife of Ct.(Dvr.) Baljeet Singh who asked her not to disclose this matter to anyone. Ct. (Dvr.) Baljeet Singh telephoned her father that a dispute has taken place between his daughter Indu and Ms. Preeta and requested him to take her daughter away from his house. Ct. (Dvr.) Baljeet Singh also accompanied with them and on reaching her village she narrated the entire incident to her parents who also asked her not to disclose the matter to anyone. She could not find a chance to go out from the house and on getting the chance she came to PS Bawana, Delhi and made a report to SI Ramesh Singh who got her medically examined. On coming to know that occurrence pertains to Vill. Gubhana, which falls within the jurisdiction of PS Sadar Bahadurgarh, Haryana, a case FIR No. 149/02-dated 09.04.2002 U/s 376 IPC PS Sadar, Bahadurgarh, Haryana was registered against Ct.(Dvr.) Baljeet Singh. He was arrested and charge sheet was filed in the court of law. Sh. Rajendra Prasad, Ld. ASJ, JJR, on completion of trial, convicted him RI for 7 years with fine of Rs.25,000/-, on 25.01.2008.

The above act on the part of Ct.(Dvr.) Baljeet Singh, No. 1304/T, 273/DAP (PIS No. 28000035) amounts to gross misconduct, depravity, moral turpitude and an act unbecoming of a police officer, which renders him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980, punishable under section 21 of D.P.Act."

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and also the relevant rules regarding conducting of the departmental enquiry, examined PW1 to PW7 and DW-1 and DW-2 and taken on record defence statement filed by the applicant and he discussed and analyzed the entire evidence and came to the conclusion that the charge leveled against the applicant was proved by his enquiry report dated 25.05.2016. Before the issuance of summary of allegation on the same set of facts a criminal case had been

filed against the applicant. In the said case, the trial Court convicted the accused and sentenced him to undergo 7 years imprisonment. On the basis of the said conviction invoking the powers under Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980, the disciplinary authority dismissed the applicant. But, however, in view of the then existing provisions of Rule 11(1) of the above said Rules, no punishment could be imposed on the conviction until the disposal of the appeal. In view of the then existing un-amended Rule 11(1) in OA No. 439/2010 filed by the applicant, this Tribunal vide order dated 10.03.2010 set aside the dismissal order. In the present departmental enquiry the evidence in the criminal case was not taken into account. This departmental enquiry was held independently and in this departmental enquiry as stated above, the charges were held proved by the inquiry officer in his inquiry report dated 25.05.2016. A copy of the inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after going through the entire material and also taking into account the representation made by the applicant and also hearing the applicant in orderly room on 26.07.2016 passed a penalty of removal on the applicant vide order dated 03.11.2016. The applicant filed an appeal. The appellate authority also taking into account the entire material on record and considering all the grounds raised by the applicant in his appeal and also hearing the applicant personally in orderly room on 21.02.2017 rejected the appeal by a reasoned and speaking order dated 28.04.2017.

5. The counsel for the applicant vehemently and strenuously contended that applicant was not allowed to cross-examine in the departmental enquiry. He submitted that before starting the departmental

enquiry, no specific order was passed as to why departmental enquiry was held as required under Rule 11(3) of the above said Delhi Police (P&A) Rules. He further submitted that there is violation of Rule 16(3) of the said Rules. In support of his contention, counsel for applicant has relied upon the order passed by the Tribunal in the case of **Raj Pal Singh Vs. Govt. of NCT of Delhi through Commissioner, Police Headquarters & Others**, reported in 2912 SCC CAT 105).

6. The counsel for the respondents equally vehemently and strenuously submitted that there is no violation of any rules governing the holding of departmental enquiry. She took us through the inquiry report in detail from which it is clear that the applicant was never denied any opportunity of cross-examination of any witness. As submitted by the counsel for respondents, there is no need to pass any specific written order as to why departmental enquiry is held under Rule 11(3) of the said rules and she further submitted that in this case under the un-amended rule 11(1) the applicant was dismissed before the disposal of the appeal filed by the applicant against the conviction and the said dismissal order was set aside by this Tribunal vide order dated 10.03.2010. Thereafter, the departmental enquiry was initiated as this Tribunal did not preclude the respondents from holding the departmental enquiry and there is nothing in the said rule 11(3) that the respondents have to pass any written order recording reasons for holding the departmental enquiry. She further rightly submitted that there is no violation of Rule 16(3) in this case. What has been brought on record in the evidence of PW-1 is 164 CrPC statement of the PW-1 which was recorded as per Section 164 CrPC, as such rule 16(3) is not applicable in the present case. In view of the facts of this case and in view of the above submissions of the counsel for

the respondents the law laid down by the Tribunal in the case of Raj Pal Singh (supra) referred to by the counsel for the applicant is not applicable in this case. Counsel for the applicant has not brought to our notice violation of any rules regarding conducting the departmental enquiry.

6. 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. Khadabazar 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."

7. 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 we have found that there is no violation of any specific rules regarding holding of departmental enquiry or principles of natural justice, the OA requires to be dismissed.

8. Accordingly, the OA is dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N.Terdal)
Member (J)

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