

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2244/2014

Reserved on 03.01.2019
Pronounced on 07.02.2019

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

Const. Bhagat Raj, Age-45 years,
S/o Late Sh. Jaswant Singh,
Village- Bhoolgarhi,
The & District- Ghaziabad.
Police Station-Masoori,
Uttar Pradesh.

... Applicant

(By Advocate:Shri Sachin Chauhan)

VERSUS

1. Govt. of NCT of Delhi through
The Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.
2. The Additional Commissioner of Police,
Traffic through
The Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.
3. The. Dy. Commissioner of Police,
Traffic (ER) through
The Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.
4. Deputy Commissioner of Police,
Eastern Range through
The Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.

... Respondents

(By Advocate: Mrs. Harvinder Oberoi)

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

We have heard Mr. Sachin Chauhan, 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:

- "i) To set aside the disagreement note dated 23.10.12, order dated 21.02.2013 whereby the major punishment i.e. forfeiture of one year approved service permanently has been imposed upon the applicant, order dated 10.10.2013 whereby the appeal of the applicant has been rejected by the Appellate Authority and to further direct the respondents that the forfeited years of service alongwith pay scale and increment be restored as it was never forfeited with all consequential benefits including seniority & promotion and pay & allowances.
- ii) To set aside the order of initiation of D.E.
- iii) To quash and set aside the order whereby the name of the applicant has been kept in Secret list of doubtful integrity 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
- iv) 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 the applicant and others had taken money from the Driver of EICHER No. UP-12T-0399 and allowed him to go without any prosecution and when the Surveillance Team started questioning the said driver, the applicant ran away from the stop on seeing the TI/PRG. The said allegation is extracted below:-

"On 04.02.2011 at 10.15 P.M., surveillance was carried out by Inspr. Mangesh Gedam, TI/PRG along with Constable Umed Singh, No. 5229/T at the intersection of Shastri Park of Shahdra Traffic Circle to verify the allegations made in two complaints filed by Sh. Rakesh Gupta. It was noticed that HC Mohd. Jama, No. 3090/T, Ct. Sanjeev Kumar, No. 1748/T & Ct. Bhagat Raj, No. 4243/T were stopping commercial vehicles without any ZO/ASI/SI. Inspr. Mangesh Gedam, TI/PRG took their photographs at the time of going on negotiations. It was noticed that one of the Constable had taken money from the Driver of EICHER No. UP-12T-0399 and allowed him to go without any prosecution. Inspr. Mangesh Gedam asked the driver of EICHER No. UP-12T-0399 to stop his vehicle. In the meantime, Constables Sanjeev Kumar No. 1748/T & Bhagat 4243/T ran away from the spot. Sh. Deepak Kumar (Driver of Eicher/MGV) told that Constable Sanjeev Kumar had threatened him to impound his vehicle and had asked him to pay Rs.500/- as bribe, if wanted to go without prosecution. Sh. Deepak (Driver of the EICHER) S/o Sh. Vikram Sharma r/o village Kalyanpur Distt. Meerut, P.S. Rota, P.O. Kalanput Meerut (UP) requested Constable Sanjeev Kumar that he had only Rs.130/- and was in position to pay him only Rs.100/- & paid it to the Constable. Constable Sanjeev Kumar, No.1748/T demanded and accepted bribe of Rs.100/- from the driver of Vehicle EICHER No. UP-12T-0399. SI Dayanand, No. D-1124 was found inside the Traffic booth, prosecuting one commercial vehicle vide challan no.735772 dated 04.02.2011, but he was unable to explain the reason for issuing of challan inside the booth. Inspr. Mangesh Gedam was observing the activities of Traffic staff at intersection from 10.15pm to 10.45pm. During this time traffic staff mentioned above was busy in stopping various commercial vehicles and collecting money. Ct. Sanjeev Kumar No.1758/T and Ct. Bhagat Raj, No. 4243/T, who were deputed for night duty, ran away from the spot on seeing TI/PRG. Only Constable Baldev Kumar No. 4177/T was found maintaining traffic at intersection.

The above act on the part of SI Dyanand, No.D-1124 (PIS No. 287607860), HC Mohd. Jama, No. 3090/T (PIS No. 28901656), Const. Sanjeev Kumar No.1748/T (PIS No. 28060482) & Ct. Bhagat Raj, No. 4243/T (PIS No. 28893183) amounts to gross misconduct, disobedience and dereliction in the discharge of their official duties and indulging in corrupt practices which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant, on his not admitting the allegation, an Inquiry Officer was appointed. The Inquiry Officer held the enquiry following the provisions of holding the departmental enquiry and after complying with the principles of natural justice. The Inquiry Officer examined PW1 to PW6 and DW1 to DW4 and after analysing the deposition of the witnesses and analyzing the defence statement given by the applicant came to the conclusion that the charge levelled against the applicant was proved. The disciplinary authority once again assessing the evidence of those witnesses, disagreed with the inquiry report and based on the evidence available in the departmental enquiry issued a disagreement memo dated 23.10.2012 and served the inquiry report alongwith the disagreement memo on the applicant, giving him 7 days time to file his representation. Accordingly the applicant submitted his representation against the disagreement note. The disciplinary authority after discussing the evidence of all the witnesses and hearing the applicant on 8.02.2013 in orderly room by speaking and detailed order imposed a penalty of forfeiture of one year approved service permanently for a period of one year vide order dated 21.02.2013. The appeal filed by the applicant was also dismissed by the appellate authority by a detailed reasoned and speaking order vide order dated 10.10.2013.

5. The counsel for the applicant vehemently submitted that the disagreement note is not a simple disagreement note but it is a final order as such the appointing authority had made up its mind to impose penalty even before issuing the said disagreement note, as such it is bad in law. He further submitted that the allegations are very vague

in nature and as such he was prejudiced in defending his case. He further submitted that there is violation of Rule 15(3) and 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980. We have perused the disagreement note. The disagreement note is not a final order. Disagreement note was served on the applicant and he was given reasonable opportunity to make representation against the same. The allegations are not vague in nature. There is sufficient evidence on record, as could be seen from the discussion of the deposition by the disciplinary authority as well as the appellate authority. There is no violation of the above said Rule 15(3) and 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980 in this case.

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. 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.”

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 the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice and thereby prejudice having caused to the applicant, the OA is devoid of merit.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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