CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1174/2014
MA 1277/2014

Reserved on 31.01.2019
Pronounced on 07.02.2019

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

Braham Singh,
PIS No. 28850288
Constable of Delhi Police
Aged about 50 years
S/o Sh. Hatti Singh
R/o Vill: Tajpur.
PO/PS : V.V. Nagr,
Distt: Bulandshar, UP. … Applicant

(By Advocate: Mr.Anil Singal)
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VERSUS

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.

2. Special C.P (Armed Police)
PHQ, IP Estate, New Delhi.

3. DCP (1st Bn. DAP)
NPL, Kingsway Camp, Delhi.

4. Sh. Parwiaz Ahmed (DANIPS)
Then Addl. D.C.P. (1st Bn.DAP)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi. …. Respondents

(By Advocate: Mrs. Rashmi Chopra)

O R D E R

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

We have heard Mr. Anil Singal, counsel for applicant and Mrs. Rashmi Chopra, 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) To quash and set aside the impugned orders mentioned in Para-1 of the OA and direct the respondents to restore to the applicant his original service and pay with all consequential benefits including promotion/seniority and arrears of pay.

(2) To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case."

3. The relevant facts of the case are that when the applicant was posted in Ist Bn. DAP, he remained absent on several occasions. In the past also he remained absent on 80 occasions as such he was a habitual absentee. On the above said allegation, a departmental enquiry was initiated against the applicant. The summary of allegation is extracted below:-

" …..while posted in Ist Bn.DAP he was to report for duty but did not turn up. He was marked absent vide DD No.56B dated 11.5.2010. Four absentee notices were issued vide Nos 6331-35/SIP/Ist Bn DAP dated 26.5.2010, 7303-07/SIP/Ist Bn.DAP dated 25.6.2010, 8521-25/SIP/Ist Bn.DAP dated 20.07.2010 and 21741-45/Ist Bn.DAP dated 31.11.2010 to Ct. Braham Singh, No. 4776/DAP, r/o H.No. 554-B, Gali No.16, Village-Gokul Pur, Delhi and C/o Shri Gopi Chand, r/o Village Kundwal (Banaras), District-Bulandshahar, UP for resuming his duty at once failing which strict disciplinary action will be initiated him. He was also directed that in case of sickness he must report to Civil Hospital, District-Bulandshahar, UP for medical examination through a board of doctors and sent medical report, but he did not so. One absentee notice dated 26.05.2010 was served upon Shri Munshi Lal, brother of Ct. Braham Singh on 3.6.2010 through HC Jagdish Singh, No. 132/DAP, absentee notice dated 25.6.2010 was served upon Mr. Ankit Kumar nephew of Ct. on 1.7.2010 through Ct.Ravinder Singh, No. 820/DAP. HC Krishan Pal, No. 681/DAP also visited the residential address of Ct.Braham Singh where Ankit, nephew of Ct.told him that his Tauji (Ct.Braham Singh) is now residing at Kundwal, Banaras, District-Bulandshahar, UP, hence absentee notice dated 20.07.2010 (last opportunity) could not be served and absentee notice dated 30.11.2010 served upon Ct.Braham Singh on 13.12.2010 through HC Krishan Pal, No. 681/DAP.

He was still running absent since 10.5.2010 willfully and un-authorizedly in the violation of CCS (Leave) Rules and SO No.111 of Delhi Police.

> From the perusal of his past record, it is evident that he is a habitual absentee and absented himself on as many as 80 occasions which have already been decided on merits but Ct. did not mend his ways."

4. Alongwith the summary of allegation, list of witnesses and list of documents were sent to applicant. As the applicant did not plead guilty, an Inquiry Officer was appointed and department enquiry was held. The Inquiry Officer following the relevant procedural rules regarding the holding of departmental enquiry and giving opportunity to the applicant in compliance with the principles of natural justice examined PW 1 to PW 5 and DW1 and after analysing the deposition of the witnesses and analyzing the defence statement submitted by the applicant came to the conclusion that the charge levelled against the applicant was proved. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after carefully examined the entire material before the inquiry officer and hearing the applicant in orderly room on 27.05.2011 and considering the representation submitted by the applicant imposed a penalty of forfeiture of one year approved service on the applicant permanently vide order dated 30.05.2011. The applicant filed an appeal. The appellate authority after carefully considering the appeal and hearing the applicant in orderly room on 30.05.2011 dismissed the appeal.

5. The counsel for the applicant vehemently and strenuously contended that though applicant remained absent, but however in view of the law laid down by the Hon'ble Supreme Court in the case of **Krushnakant B.Parmar** Vs. **Union of India and Anr.** (2012) 3 SCC

178) submitted that there is no wilful absence on the part of the applicant as he was undergoing treatment with a Dr.DW1.

6. The counsel for the respondents equally vehemently submitted that the applicant was a habitual absentee and he has not pruduced any evidence regarding his medical illness with respect to all the days on which he remained absent and even the DW-1 has in disposition stated that the sickness by which he was suffering is not such as to prevent him from informing the authorities and applying for appropriate leave for the purpose of medical treatment. In view of the submissions made by the learned counsel for the respondents the law laid down by the Hon'ble Supreme Court referred to above is not applicable to the facts of this case.

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:
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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;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
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> 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 is devoid of merit.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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