CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH

OA 4544/2014

Reserved on 29.01.2019
Pronounced on 27.02.2019

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

Shankar Lal, Constable
Aged about 47 years,
S/o Late Shri Kishan Lal
R/o L-Block, H.No.690,
Mangol Puri, Delhi-110 083. … Applicant

(By Advocate: Mr. M.K.Bhardwaj)

VERSUS

Commissioner of Police & Ors through:

1. The Commissioner of Police,
   Police HQ, I.P. Estate,
   New Delhi.

2. The Additional Commissioner of Police,
   Police Control Room,
   Delhi.

3. The Addl. Deputy Commissioner of Police
   (GA), Police Control Room,
   Delhi. … Respondents

(By Advocate: Mr. K. M.Singh)

O R D E R

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

We have heard Mr. M.K.Bhardwaj, counsel for applicant and Mr. K.M. Singh, 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 quash and set aside the impugned order No. 4417-52/HAP/P-II/PCR dated 06.03.2013 and appellate authority order dated 25.04.2014 (Annexure A-1 and A-2 respectively).

(ii) To declare the Disciplinary proceedings initiated against the applicants as unjustified and direct the respondents to release all consequential benefits included arrears of pay and seniority.

(iii) To direct the respondents to treat the period of suspension from 03.08.2011 to 15.11.2011 as spent on duty for all purposes, with further directions to grant all consequential benefits including arrears of pay.

(iv) To allow the OA with costs."

3. The relevant facts of the case are that on the allegation that the applicant accepted Rs.10,000/- as entry money from the complainant Mr. Deepak Kumar for extending favour to him against the traffic rules, a summary of allegation was served on the applicant. The said summary of allegation is extracted below:

> "It is alleged that one Sh. Deepak Kumar Singh S/o Sh. Yogender Singh R/o Village Rangpuri, House No.-4, Gali No.1, House of Kartar Singh, opposite Punjab National Bank, Delhi Permanent address, village Gosai Singh, P.O. Huntergunj, PS Huntergunj, Distt. Chatra, Jharkhand, Office address, Orient Transport Agency, F-321 A, MB Road, Lado Sarai, Mehrauli, Delhi is working as a supervisor in the above mentioned company. The company is in the business of supplying CNG to the Indraprastha Gas Limited. His company operates 35 such vehicles on 24 hours basis. It has to operate the vehicle during No entry Timings also. Only 10(ten) vehicles have the permission to run during No Entry Hours. Sh. Deepak Kumar has alleged that because some of the vehicle ply during No entry hours also, the traffic staff demands Rs.1000/- to 3000/ (Entry) per traffic point every month to escape penal action.
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> On 21-7-2011 as per the directions of senior officers a team comprising of Inspector Manoj Kumar, No. D/386, Inspector Rajender Prasad, No D/3363, the complainant Deepak Kumar and his associate Sh Dev Anand was constituted and a sting operation was conducted. At Simon Boliver Marg Ridge Road T-Point, Ct. Shankar Lal, No. 5616/T accepted entry money Rs.2000/- from the complainant in the presence of ZO/ ASI (Now HC) Rajpal, No.2048/T and Ct.Pramod No. 5394/T. At Gurgaon Road Station Road red light near Dhaula Kuan Metro Station traffic point Ct. Ravindra Kumar No.3775/T accepted Rs.1000/- as entry money from one complainant. At Kendriya Vidyalaya Sector-8 R. K. Puram just around the bend close to the taxi stand/booth Ct Anil Bhai, No.3911/T accepted Rs.1000/- as Entry money from the complainant.

> The above act on the part of ASI (now HC) Rapal, No.2048/T, Ct.Pramod Kumar, No.5394/T Ct.Shankar Lal, 5616/T, Ct. Ravindra Kumar, No.3775/T and Ct. Amit Kumar No. 3911/T amounts to grave misconduct, negligence, dereliction in the discharge of their official duties and involvement in corrupt practices which render them liable to be punishment under provisions of Delhi Police (Punishment and Appeal) Rules-1980."

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 procedural rules regarding holding of the departmental enquiry, examined PW1 to PW12 and DW1 to DW3 and taken on record the defence statement submitted by the applicant and carefully discussed and analyzed the deposition of all the witnesses and came to the conclusion that the charge leveled against the applicant was established. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering the entire evidence brought on record in the departmental enquiry and after carefully considering the representation of the applicant against the inquiry report and also hearing the applicant in orderly room on 26.02.2013 imposed a penalty of forfeiture of one year approved service permanently vide order dated 06.03.2013. The applicant filed an appeal. The appellate authority also went through the entire evidence and also considered all the grounds raised by the applicant in his appeal and heard the applicant in orderly room on 18.03.2014 and rejected the appeal vide order dated 25.04.2014.

5. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence, that the applicant is meted with hostile discrimination. The counsel for the respondents took us through the entire evidence of PW 1 to PW12 which demonstrates that there is sufficient evidence on record for the inquiry officer to hold that the charge against the applicant was established. From the perusal of the records, it is clear that there is no discrimination meted out to the applicant at all. As submitted by the counsel for respondents that the inquiry report is a cogent and well considered inquiry report based on the evidence brought on record in the inquiry report and the impugned orders of the disciplinary authority as well as the appellate authority are well considered reasoned and speaking orders.

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.
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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.

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 alsoendorsed 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 and circumstances of the case narrated above and in view of the law laid down by the 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, the OA requires to be dismissed.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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