CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH

OA 2273/2014

Reserved on 08.01.2019
Pronounced on 25.02.2019

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

HC Rohtash Mann, Age-43 years,
549-T, PIS No. 28930104,
S/o Sh. Amar Singh,
R/o-VPO-Bhirr, The-Gohana,
Disrict- Jhunjhunu,
Rajasthan. …. Applicant

(By Advocate: Mr.Sachin Chauhan)

VERSUS

1. Govt. of N.C.T.D, Through
The Commissioner of Police,
Delhi Police, PHQ, I.P. Estate,
New Delhi.

2. The Addl. Commissioner of Police,
PCR through
The Commissioner of Police,
Delhi Police, PHQ, I.P. Estate,
New Delhi.

3. The Addl. Dy. Commissioner of Police,
Police Control Room through
The Commissioner of Police,
Delhi Police, PHQ, I.P. Estate,
New Delhi.

4. The Dy. Commissioner of Police,
Traffic (SR) through
The Commissioner of Police,
Delhi Police, PHQ, I.P. Estate,
New Delhi. … Respondents

(By Advocate: Mrs. Sangita Rai with Ms. Kumud Ray)

O R D E R

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

We have heard Mr. Sachin Chauhan, counsel for applicant and Mrs. Sangita Rai, 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 impugned order dated 15.03.2013 of disciplinary authority whereby the punishment of forfeiture of three years approved service permanently has been imposed upon the applicant and order dated 15.04.2014 whereby the appeal of the applicant has been rejected and to further direct the respondents that the forfeited years of service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.
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> ii) To set aside the order of initiation of D.E. dated 17.08.2012.
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> iii) To set aside the finding of enquiry officer dated 18.01.2013.
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> 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 on the allegation that the applicant had taken Rs.500/- from one Bakshudin r/o F-8, Chattarpur Extension, Mehrauli illegal and without issuing a challan, as such his conduct was grave misconduct and it amounts to indulgence in corrupt activities, a summary of allegation was served on the applicant. The summary of allegation is extracted below:

> "It is alleged against HC Rohitash Mann, No. 549/T(PIS No-28930104) that while he was posted in Mehrauli Circle, (SR) Traffic Unit, a telephone call was received by TI/MRC from Traffic Control Room on 30-03-12 at about 2030 hours that one person has made a complaint from mobile telephone No. 99717712471 that HC Rohitash Mann No. 549/T has taken Rs.500/- from him near Lado Sarai crossing in front of Ahinsa Sthal, illegally and without issuing any challan. TI/MRC contacted the complainant on above said mobile telephone No. The complainant revealed his name as Bakshudin r/o r/o F-8, Chattarpur Extension, Mehrauli, New Delhi-110074 and confirmed the allegations. He was willing to give a written complaint against the HC Rohitash Mann, No. 549/T was

> also present. The complainant reiterated the allegations and identified HC Rohitash Mann, No.549/T as the official who had taken Rs.500/- from him illegally, without issuing any challan. The complainant submitted a written complaint also against HC Rohitash Mann No. 549/T.
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> The above act on the part of HC Rohitash Mann No. 549/T (PIS No. 28930104) amounts to gross misconduct, carelessness, negligence, and indulging himself in corrupt activities while discharging his official duties which renders him liable to be dealt with departmentally under the provision 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 charge, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice as well as all the relevant rules governing the holding of the departmental enquiry examined PW1 to PW5 and DW1 and DW2 and taken on record the defence statement filed by the applicant and discussed the entire evidence of all the witnesses and came to the conclusion that the charge levelled against the applicant was proved by his inquiry report dated 17.08.2012. The inquiry report was served on him vide letter dated 07.02.2013. The applicant submitted his representation against the inquiry report. The disciplinary authority after going through the entire evidence and carefully considering all the grounds raised by the applicant in his representation came to the conclusion that the findings of the inquiry officer are just and proper and after hearing the applicant in orderly room imposed a penalty of forfeiture of three years approved service permanently in the time scale of pay with immediate effect, entailing proportion reduction in his pay from Rs.12,480/-PM (including grade pay) to Rs. 11,400/- PM (including grade pay) on the applicant vide order dated 15.03.2013. The applicant filed an appeal. The appellate authority also after considering once again all the

evidence recorded in the departmental proceedings, by a reasoned and speaking order dismissed the appeal after hearing the applicant in orderly room on 20.03.2014 vide order dated 15.04.2014.

5. The counsel for the applicant vehemently and strenuously contented that it is a case of no evidence, and that the findings of the inquiry officer as well as those of the disciplinary authority and appellate authority are perverse in nature. He took us through some aspects of the inquiry report, which were in favour of the applicant in cross examination of PW3 and PW4 in support of his contention.

6. The counsel for the respondents equally vehemently contended that there is sufficient evidence on record and the counsel for the respondents took us through the entire deposition of all the witnesses which have been recorded in enquiry proceedings to hold that the charge levelled against the applicant was proved. We have also gone through the impugned orders of disciplinary authority as well as the appellate authority, both of them are well considered, reasoned and speaking orders.

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.
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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 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;
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> 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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