CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3316/2012
MA 4797/2018

Reserved on: 03.04.2019
Pronounced on: 09.04.2019

Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Ms. A.K.Bishnoi, Member (A)

Jagmal Sharma
(Belt No. 4046/Security)
Sub: Disciplinary Proceedings,
Min./Deptt: Delhi Police
Group 'C' Age 50 years
S/o Sita Ram Sharma
Employed as Head Constable,
DELHI POLICE, E-Block,
Security Line, New Delhi. … Applicant

(By Advocate: Mr. Susheel Sharma)

VERSUS

1. Govt. of NCT of Delhi
Through: The Commissioner of Police,
Police Head Quarters, I.P.Estate,
ITO, New Delhi.

2. Joint Commissioner of Police,
Security: New Delhi
Police Head Quarters, I.P.Estate,
ITO, New Delhi.

3. The Deputy Commissioner of Police,
Security: New Delhi
Police Head Quarters, I.P.Estate,
ITO, New Delhi. … Respondents

(By Advocate: Ms. Esha Mazumdar with Ms. Priya Agarwal)

O R D E R

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

We have heard Mr. Susheel Sharma, counsel for applicant and Ms Esha Mazumdar, 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:

> "(a) to quash and set aside the impugned orders passed by the respondents, true copies of which are available as AnnexureA-1(colly) to the O.A.
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> (b) to grant all the consequential benefits to the applicant resulting from quashing of above orders.
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> Grant any other relief that the Hon'ble Tribunal deems fit and proper keeping in view the facts and circumstances of the present case."

3. The relevant facts of the case are that on the allegation that the accused in collusion with the accused in FIR No.229/05 u/s 406/420/120B IPC filed by one Sheela cheated and mis-appropriated huge amount of innocent individuals, a summary of allegation was issued to the applicant. The detailed summary of allegations is extracted below:

> "It is alleged that one Sushila W/o HC (Exe.) Nand Kishor R/o B-3, Police Colony, Pitam Pura was arrested in case FIR No. 229/05 u/s 406/420/120-B IPC PS Mangolpuri in which it was alleged that said Smt. Sushila induced innocent individuals by assuring them that 2% monthly interest would be paid on their investment. Several innocent individuals, under the belief that the representation made were correct, invested different amount of money with her. However, to their utter dismay neither assured/promised interest nor the principal amount was returned to the poor investors and thus their invested amount was misappropriated by her. On 17.04.05, accused Sushila disclosed during investigation that she had given a big amount of money out of ill-gotten money to HC Jagmal Sharma No. 4046/SEC and his son Surender, now he is posted in Security unit. These facts are suggestive of HC Jagmal Sharma having indirect collusive complicity with Sushila in commission of offence of misappropriation and cheating.
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> During the course of investigation, HC Jagmal Sharma No. 4046/SEC and his son Surender were interrogated who stated that they had given cash to accused Sushila at 3% interest & invested his own amount in committee (Chit) as well as chit amount of his friends. After maturity of chits, accused Sushila gave him cheques for payment which bounced when presented in the bank. So, Sushila gave the property paper to his son Surender in lieu of balance payment as mortgage. The property papers of (1) flat no. 3, 2nd floor, Mohella Madhav Ganj, Satyanarain Mandir Road, Distt. Sikar (Rajasthan) (2) 400 yards plot at Sikar (Rajasthan) in the name of Sushila Devi, (3) 266 yards flat in the name of Kusum were produced by Surender filed a complaint case u/s 138 N.I.Act

in the court regarding dishonoring of cheques. She gave these property papers in the lieu of balance payment. HC Jagmal Sharma No. 4046/SEC and Surender also disclosed that they purchased the 8 big has agricultural land in Rs.1,50,000/- from Tej Pal S/o Kalu Ram (Cousin brother of Surender) on 15.04.04. They produced the photocopies of A/C statements of bank of Barouda in which transaction of cheques of accused Sushila were found on the record. The investigation of the case is still going on.

Thus, the allegation against HC Jagmal Sharma No. 4046/SEC are that (1) he received the ill-gotten money from the accused Sushila as per disclosure statements, (2) he paid cash to Sushila on 3% interest and invested in committee with accused Sushila, the record of cheques of Sushila are found on pass-book statements, (3) he kept mortgage the proper papers of Sushila in lieu of payment as such on 3% interest and committee scheme, (4) purchased the agricultural land during the period of appropriation but he never informed to the department regarding these transaction.

The above act on the part of HC Jagmal Sharma No. 4046/SEC amounts to gross misconduct for maintaining absolute integrity, lack of professionalism, dereliction and unbecoming of a police officer which render 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 documents, and list of witnesses 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 and also the rules governing the holding of departmental enquiry, examined PW1 to PW6 and taken on record the defence statement filed by the applicant and after examining the evidence brought on record concluded that the charge leveled against the applicant was proved vide his inquiry report dated 02.06.2010. A copy of the inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority after perusing the entire material on record and discussing the evidence on record and taking into account all the grounds raised by the applicant in his representation against the inquiry report imposed a penalty of

forfeiture of two years approved service for a period of two years permanently on the applicant vide order dated 21.01.2011. The applicant filed an appeal. The appellate authority also once again discussed the entire evidence and also discussed all the grounds raised by the applicant in his appeal and after hearing him personally by a reasoned and speaking order rejected the appeal vide order dated 24.08.2011.

5. The counsel for the applicant vehemently and strenuously submitted that the name of the applicant does not figure in the FIR and the said accused with whom he was alleged to have colluded was cited and examined as a witness as such he has been put to prejudice in defending his case and that the finding of the inquiry officer is based on the evidence which is not relevant and therefore, perverse and that the orders passed by the disciplinary authority and appellate authority are not a speaking order. In support of his contention, the counsel for the applicant relied upon the law laid down by the Hon'ble Supreme Court in the case of **Hardwari Lal** Vs. **State of U.P. & Ors**. (JT1999 (8) SC 418). The counsel for the respondents vehemently submitted and took us through the deposition of all the PWs and several other documents and submitted that though the accused with whom the applicant had colluded has not been examined but however the deposition of the complainant in the said FIR is on record and in the deposition of the said complainant read with the evidence of other witnesses it is clear that the inquiry report is not at all perverse. She has taken us through the orders passed by the disciplinary authority and the appellate authority as well. In support of her contention that the non-examination of a particular witness does not render the inquiry report perverse, she relied upon the law laid down by the Hon'ble Supreme Court in the latest case of **Ajit Kumar Nag** Vs.

Indian Oil Corporation Ltd. Haldia and Ors.(AIR 2005 SC 4217). In view of the facts of the case, the law laid down by the Hon'ble Supreme Court in the case of Hardwari Lal(supra) is not applicable to the present 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:-
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> "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.
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> 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 influence 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 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 or principles of natural justice, the OA requires to be dismissed.

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

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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