

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH**

OA 1438/2017
MA 1589/2017

New Delhi this the 23rd day of January, 2019

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

Ombir S/o Dharampal
Aged about 38 years
Designation Constable Group C,
R/o H.No.41/1, Fatehpur Beri Kaiya Mohalla,
New Delhi. ... Applicant

(By Advocate: Mr. Piyush Sharma)

VERSUS

1. Delhi Police
Through its Commissioner,
Police Headquarters, ITO.,
New Delhi.
2. Additional Commissioner of Police,
Armed Police Force,
Police Headquarters, ITO,
New Delhi.
3. Dy. Commissioner of Police,
Ist Bn. DAP, Delhi
Police Head Headquarters,
I.T.O., New Delhi. ... Respondents

(By Advocate: Mrs. Alka Sharma)

O R D E R (ORAL)

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

We have heard Mr. Piyush Sharma, counsel for applicants and Mrs. Alka Sharma, 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) call for the record of the case for perusal;
 - b) set aside the inquiry report dated 08.07.13;

- c) set aside the order dated 23.10.13 passed by the Disciplinary Authority;
- d) set aside the order dated 26.09.14 passed by the Appellate Authority;
- e) set aside the order dated 13.08.15 and 24.09.15 whereby the pay of applicant is refixed;
- f) award the cost of the petition to the applicant;
- g) Any other order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice."

3. The relevant facts of the case are that on the allegation that the applicant developed intimacy with the complainant Ms. Kiran D/o Sh. Diwari Lal and having already married, tied a knot to the complainant and lived with her as husband and wife from 02.10.2008 to January, 2009, a summary of allegation was served on the applicant. The said summary of allegation is extracted below:-

"It is alleged that you, Ct.Ombir Singh No.166/SE (now 4533/DAP), PIS No. 28012067 that while you posted at Ambedkar Nagar one Ms Kiran D/O Sh.Diwari Lal R/O 3/617 Dakshin Puri, New Delhi made a complaint against you alleging therein that she met you on 23.09.2006 at Dakshin Puri in a Navaratra Mela after which the intimacy among you & she started growing and thereafter you and she tied the knot in Kalkaji Temple, Delhi. On 02.10.2008, you Ct.Ombir Singh took her to a rented flat No.E-139, Sector-4, Pushp Vihar. You & She both remained there as husband & wife till mid January, 2009.

On 20.01.2009s she came to know that you Ct. Ombir Singh were already married to another lady namely Seema. When she asked you about this, you started beating her cruelly. She met SHO Ambedkar Nagar on 12.04.2009 regarding the matter but no action was taken by the SHO against you, Ct. Ombir Singh. On 28.05.2009 you, Ct. Ombir Singh took her an Accent car (Black Color) and under coercion you had sexual intercourse with her and the Accent car belongs to SHO Ambedkar Nagar.

An enquiry was got conducted through ACP/PG Cell/South Distt. During the course of enquiry complainant, Ms. Kiran stated in her statement that she met with you, Ct.Ombir Singh in a fete in Dakshin Puri and you and she became friends. She was a student of Bhagat Singh College and after meeting she noticed that you, Ct.Ombir Singh used to stand outside her college and gradually the intimacy among you and she growing. Finally you and she got

married at Kalkaji Temple on 27.03.2008 and she did not inform her family about her marriage with you.

After seven months of marriage you, Ct. Ombir Singh took her to a rented flats No.E-139, Sec-4, Pushp Vihar. You and she stayed there as husband and wife and maintained physical relationship. She remained there for four months. She used to stay in the rented flat only during the day time and return to her home at night and her family was not aware of her marriage. You and she left the rented flat after four months.

On 19.01.2009, when she contacted you, Ct. Ombir Singh on your mobile phone, a lady responded who told that she is wife of you, Ct. Ombir Singh. She (complainant) shocked to know that you, Ct. Ombir Singh was already married with someone else. When she asked you, Ct.Ombir Singh about this, you started beating her despite having promised her to get married socially and legally. After that whenever she asked you to marry her socially then you used to beat her mercilessly. She did not complain about it to the police with the hope that you would marry with her soon.

Later on, she complain to SHO Ambedkar Nagar but no action was taken by him. You Ct. Ombir Singh also had forcefully sexually intercourse with her in the black colour Accent car which belongs to SHO Ambedkar Nagar. On 26.09.2009 you also threatened her not to disclose anything to SHO. She wanted legal action against you, Ct. Ombir Singh as you have made physically relation with her on false promises of solemnizing marriage with her socially inspite of the fact of that you were already married to someone else.

Inspr. Investigation, PS Ambedkar Nagar also enquired the matter and during enquiry you, Ct. Ombir Singh had given in writing that you would marry her but later on denied. Her mother is also supporting you, Ct. Ombir Singh in greed of getting Rs. 3 Lacs from you in lieu of compromising the matter. She (complainant) also produced temporary membership cards of Saket Sports Complex of you, Ct. Ombir Singh and herself and it had been found that both the cards have same address as House No.411, Fatehpur Village, Delhi, which belongs to you, Ct. Ombir Singh

On arrest in case FIR No. 74/2010 U/S 376/493 IPC, P.S. Ambedkar Nagar, Delhi you were placed under suspension with effect from 20/03/2010 vide office order No.2213-31/HAP/1st Bn.DAP dated 25/03/2010.

By involving in the above reprehensible case, you Ct. Ombir Singh has committed grave misconduct of moral turpitude. Beside, you Ct.Ombir Singh No.1665/SE (4533/DAP) has also failed to intimate to the department about the above criminal case against you, which is violation of Rule-3 of CCS conduct nRule, 1964.

The above act on the part of you, Ct. Ombir Singh No.4533/DAP amounts to gross misconduct and an act of unbecoming Police personnel and you have also violated Rule-3 of CCS conduct Rule, 1964 which renders you liable for departmental

action under the 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 conducted the departmental enquiry following the principles of natural justice and the relevant rules governing the holding of departmental enquiry and examined PW1 to PW6 and taken on record the defence statement submitted by the applicant and discussed and analized the deposition of each one of the witnesses and came to the conclusion that the charge leveled against the applicant was substantiated vide his inquiry report dated 8.07.2013. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering all aspects of the matter and hearing the applicant in orderly room on 04.10.2013 imposed a penalty of forfeiture of five years approved service permanently on the applicant vide order dated 23.10.2013. The appeal filed by the applicant was also considered by the appellate authority in detail and gone through the entire evidence and heard the applicant in orderly room on 19.09.2014 and having found no merit in the appeal rejected the appeal of the applicant vide order dated 26.09.2014.

5. In the criminal case initiated against the applicant on the same set of charges, the court of Sh. Gulshan Kumar, Additional Sessions Judge-01 (South) Saket Courts New Delhi vide his judgment dated 18.05.2013 acquitted the accused as the prosecution failed to prove the case beyond reasonable doubt. The applicant in his representation against the inquiry report contended that in view of the above said acquittal, he should be

exonerated in the departmental enquiry. The counsel for the applicant vehemently and strenuously contended that this is a case of no evidence. He further contended that as the applicant was acquitted by the criminal court on the same set of facts and the evidence brought on record in the departmental enquiry should not be given any credence and he should be exonerated and the entire departmental enquiry and the orders passed by the disciplinary authority and the appellate authority requires to be set aside.

6. The counsel for the respondents equally vehemently submitted that the scope and the requirement as to the proof in the departmental enquiry and in the criminal proceedings are totally different and moreover the applicant has been acquitted in the criminal trial giving benefit of doubt and that there is sufficient evidence which has come on record in the departmental enquiry to sustain the enquiry report and the impugned orders; and on that basis she further submits that the impugned enquiry report and the orders of the disciplinary authority and appellate authority do not call for interference. She further took us through the entire evidence of all the witnesses PW1 to PW6 and the orders passed by the disciplinary authority and the appellate authority. We have also perused the order passed by the disciplinary authority who has discussed the ground taken by the applicant on the basis of his above said acquittal also. The relevant portion of the order passed by the disciplinary authority is extracted below:

“.....As far as the question of acquittal, both the enquiries are distinct and different as per existing norms and in our administrative enquiry the charge has been proved. It has been established in the enquiry on the basis of material statements and record that the delinquent Constable has developed physical relations with a lady on the pretext of being a bachelor and damaged her growing career. Before

registration of criminal case on 31.10.2008 he also got prepared his and her temporary membership card of Saket Sports Complex mentioning same address as 41/1, Fatehpur, New Delhi, which is his residential address as per his undertaking given by him on 08.01.2008 on stamp paper of Rs.50/- Asa per undertaking he affirmed that he will marry with Kiran (complainant) after 19 months. All these documentary evidences, registration of criminal case and his arrest after investigation unequivocally proves that he has committed an act of moral turpitude and deserve major penalty for violating the terms of Rule 3 of CCS (Conduct) Rules, 1964."

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. Khadabazar 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:

- 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."

8. 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.

9. Accordingly, OA is dismissed. No order is required to be passed in MA 1589/2015 for condonation of delay. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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