CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1585/2015

Reserved on 14.11.2018
Pronounced on 12.12.2018

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

Raghuraj
HC in Delhi Police,
PIS No. 28826349
Aged about 53 years
S/o Late Sh. Raghubir Singh,
R/o A-20, Gali No.1, Patel Vihar,
East Karawal Nagar, Delhi-94. … Applicant

(By Advocate: Mr.Anil Singal)

VERSUS

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi-110002

2. Jt. Commissioner of Police,
South-Eastern Range,
PHQ, I.P. Estate, New Delhi-110002

3. Dy.Commissioner of Police,
South East Distt.)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi. … Respondents

(By Advocate : Mr. Amit Anand)

O R D E R

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

Heard Mr. Anil Singal, counsel for applicant and Mr. Amit Anand, 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 punishment Findings, Order of Punishment dt. 8.11.2013 and Appellate Order dt. 7.5.2014 and direct the respondents to restore to the applicant his original increments and pay with all consequential benefits including promotion/seniority and arrears of pay.

2. To award costs in favour of the applicant and

3. To 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 a departmental enquiry was conducted against the applicant for the allegation that he along with his wife went to the house of complainant Rajender and in the presence of some of the PWs, the applicant hit the complainant on his head with a Danda in furtherance of the long standing dispute between two families. The relevant portion of the allegation is extracted below:

> "Departmental Enquiry was initiated against HC (Ex.) Reghuraj No. 396/SE (PIS No. 28826349) with the allegation that on 06.04.12 at about 12.15 PM, complainant, Rajender along with his wife Hemlata came to his house on Motorcycle and parked his motorcycle. In the meantime they were surrounded by their neighbours Prashant, Nishanat @ Golu, Ashu and Dipanshu @ Abu beaten up by them. Subsequenty, Raghuraj along with his wife Premlata, niece Anita, Manisha, sister in law Dayawati came to the spot. Accused Raghuraj hit the complainant on his head with Danda. Anyhow the complainant Rajender and his wife managed to escape from the spot. Complainant Rajender Singh alleged in his statement that his neighbour Raghuraj along with his Family members have beaten them as there is long lasting dispute running between both the families.
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> A case vide FIR No. 97/12 dated 06.04.12 U/s 308/323/341/34 IPC PS Karawal Nagar was got registered against HC Raghuraj and others. On the statement of complainant Sh. Rajender Kumar accused Raghuraj was

> arrested on 07.04.12 and released on bail on 09.04.12 from the court.
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> The above act on the part of HC Raghuraj Singh No. 396/SE amounts to gross misconduct, negligence and unbecoming of a Police officer, which renders liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

4. Along with summary of allegation, list of witnesses and list of documents etc. as required under the rules were furnished to the applicant and departmental enquiry was held. In the departmental enquiry after examining 4 PWs and 6 DWs, the Inquiry Officer came to the conclusion after elaborate discussion of the evidences that the charge levelled against the applicant was proved. The disciplinary authority vide its order dated 8.11.2013 after going through the entire material and the representation of the applicant against the report of the inquiry officer and hearing him in orderly room imposed a penalty of withholding of next increment for a period of two years with cumulative effect on the applicant. The appeal filed by the applicant was also considered by the appellate authority along with all he material and after hearing the appellant in orderly room and then by a reasoned and speaking order upheld the penalty imposed by the disciplinary authority by rejecting his appeal vide order dated 07.05.2014.

5. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence. That there were cross-complaints. One complaint filed by the said complainant Rajender and another complaint filed by the applicant. As it a case of complaint and cross complaint, the inquiry officer should have been very cautious in believing the version of the PWs. The counsel for the applicant

submitted that the Inquiry Officer disbelieved the deposition of the DWs and he has totally believed the deposition of PWs and arrieved at a wrong finding.

6. The counsel for the respondents has taken us through the deposition and the discussions of the inquiry officer. We have not found any bias or any non consideration of the evidence of any deposition by the Inquiry Officer.

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.
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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 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."

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 or principles of natural justice, the OA requires to be dismissed.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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