

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1536/2013

Reserved on 19.03.2019
Pronounced on 29.03.2019

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

Inspector Sushil Chandra Sharma
S/o Late Sh. Sis Ram Sharma,
R/o B-706, MIG Flats, East of Loni Road,
Shahdara, Delhi-93.

... Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters, IP Estate,
New Delhi.
3. Special Commissioner of Police
Armed Police, Police Headquarters,
IP Estate, New Delhi.

... Respondents

(By Advocate: Mrs. Harvinder Oberoi)

ORDER

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

We have heard Mr. Ajesh Luthra, counsel for applicant and Mrs. Harvinder Oberoi, 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) quash and set aside order dated 9.11.2011 passed by Respondent No.3 vide which the applicant has been awarded punishment and order dated 23/26.4.2012 passed the respondent no. 2 vide which the appeal of the applicant has been rejected.

- (ii). Quash and set aside the findings submitted by the enquiry officer vide which the charge has been held partly proved against the applicant.
- (iii). To direct the respondents to grant all the consequential benefits.
- (iv). Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be passed in favour of the applicant.
- (v) Cost of the proceedings be awarded in favour of the applicant and against the respondents."

3. The relevant facts of the case are that for not registering the FIR and not taking immediate action on the complaint filed and thereby enabling one of the parties namely accused Nathu Singh to secure favourable order prejudicing the case of the complainant, a summary of allegation for professional incompetence, negligence, careless, criminal involvement and dereliction of duty was served on the applicant. The summary of allegation is as follows:

"It is alleged against you Inspr. Sushil Chand Sharma, No.D-1/73 that while posted as SHO/New Usman Pur, Delhi, you failed to take necessary action on complaint of Shri Rameshwar Dayal s/o Krishan Dayal r/o H.No. 55, Sawarkar Apartment, Plot No. 1039, I.P.Extn, Delhi on 20.11.08 regarding land grabbing done by one Nathu Singh. You also remained negligent in taking legal action on his complaint. The delay in registration of case facilitated accused Nathu Singh in obtaining status quo in the civil suit No. 604/08 filed by Nathu Singh in civil Court with ulterior motive to grab the property No. K-33, Gali No. 12, Bhram Puri Delhi fraudulently. You also remained negligent in taking action after registration of case FIR No.333 dt. 12.11.08 u/s 448/454/ 380/420 /468/473/182/506/34 IPC PS N.U.Pur and failed to make recoveries of goods taken away by the accused, You rather moved court for having protection against breaking locks for affecting recovery of the property by presenting facts of status quo granted by civil court. This act also explicitly shows your malafied intention and connivance with accused Nathu Singh.

It is also alleged that you connived with accused Nathu Singh and got case registered vide FIR No. 207 dt. 6.9.08 u/s 457/380 IPC PS New Usman Pur on fictitious ground and got

arrested one accused namely Manif to show possession of property grabbed. The I.O of the case HC Krishan Pal No. 374/NE and you connived with the accused to create evidence in favour of the accused. The telephonic conversation on mobile phone with the accused during the period 10.2.08 to 21.1.08 also shows that you remained constant touch with the accused and connived with him and helped him in his illegal activities of land grabbing, theft and creation of false evidence, threatening of complainant etc.

The above act on part of you Inspr. Sushil Chand Sharma No.D-1/73, SHO/New Usman Pur and HC Kishan Pal Rana No. 374/NE amounts to gross misconduct, professional incompetence, negligence, careless, criminal involvement and dereliction in the discharge of your official duties which renders both of you liable to 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 on 21.05.2009. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice as well as the rules governing the departmental enquiry, examined PW1 to PW7 and DW1 to DW3 and also taken on record defence statement filed by the applicant and discussed and analyzed the evidence brought on record and came to the conclusion that the charge levelled against the applicant was proved vide his inquiry report dated 26.05.2011. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after going through the entire evidence which has come on record and also taking into account all the grounds raised by the applicant and also hearing the applicant in orderly on 4.11.2011 passed an order imposing the penalty of forfeiture of one year service temporarily vide order dated 09.11.2011. The applicant filed an appeal. The appellate authority also after going through the entire evidence and also taking into account all the grounds

raised by the applicant in his appeal and also hearing him in orderly room rejected the appeal vide order dated 23.04.2012.

5. The counsel for the applicant vehemently and strenuously contended that it a case of no evidence and he further submitted that non examination of the complainant Rameshwar Dayal has prejudiced his case and that as the applicant has taken timely action as such there is neither negligence nor dereliction of duty as such the report of inquiry officer is perverse in nature and he further submitted that the orders of the disciplinary authority and appellate authority are non speaking orders and they are based only on assumptions and presumptions. The counsel for the respondents equally vehemently submitted that non examination of the complainant has not prejudiced the case of the applicant and as it is a cognizable case and there is sufficient evidence brought on record by examining PW1 to PW7 and after giving reasonable opportunity to the applicant for examining his own witnesses as DW1 to DW3, the inquiry officer rightly came to the conclusion that the charges are proved. At the time of hearing, the counsel for the respondents produced translated copies of all the 4 DD entries right from 20.11.08 8.20AM to 21.11.08 8.02PM and she also produced translated copy of the FIR which was ultimately registered on 22.11.08 at 20.30hrs to further demonstrate the dereliction of duty on the apart of the applicant, as the counsel for the applicant strenuously contended that there was no dereliction of duty.

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.

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 officer 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 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 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, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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