CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 06/2014

Reserved on 08.02.2019
Pronounced on 18.02.2019

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

Vinod Kumari (W/SI)
W/o Sh. Bijender Singh, Age 46 years,
R/o 4/1470, Gali No. 14,
Dalai Mohalla, Shahdara, Delhi-32. … Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

1. The Govt. of N.C.T.D.,
Through Commissioner of Police,
Police Headquarters, IP Estate,
New Delhi

2. The Addl. Commissioner of Police
(Traffic),
Police Headquarters, MSO Building,
IP Estate, New Delhi.

3. The Dy. Commissioner of Police
(Traffic) ER,
Through the Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.

4. The Dy. Commissioner of Police
(Traffic) Hqr.,
Through the Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi. ... Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

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

We have heard Shri Sachin Chauhan, counsel for applicant and Mrs. Sumedha 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:

"8.1. To set aside the order dated 21.02.2013 and order dated 26.09.2013 whereby the appeal of the applicant has been rejected and to further direct the respondent the forfeited year of service be restored as it was never forfeited with all consequential benefit including seniority & promotion and pay & allowance.

8.2. To quash and set aside the Findings of the EO.

8.3 To quash and set aside the Order dated 29.05.2013 whereby the name of the applicant has been kept in secret list of doubtful integrity w.e.f. 21.02.2013 for a period of three years and to further direct the respondent that the name of the applicant be removed from secret list of doubtful integrity from the date of its inception.

8.4 To set aside the order dated 24.05.2012 whereby a departmental enquiry has been initiated against the applicant.

Or/and

(i) Any other relief which this Hon'ble Court deems fit and proper and in the interest of justice may also be awarded to the applicant."

3. The relevant facts of the case are that on the allegation that the applicant demanding and accepted Rs.600 without issuing a proper challan and, therefore, his conduct exhibited lack of integrity, indulgence in corruption and misuse of power etc. a summary of allegation was issued to the applicant vide order dated 24.5.2012. The said allegation is extracted below:

> "It is alleged against you W/SI Vinod Singh, No.2130/D (PIS No.2489004) that on 18.01.2012, you stopped one LGV No.DL-ILP-7648 being driven by Lal Chand at Preet Vihar, Vikas Marg and issued a challan of without reflector and obtained Rs.600/- from driver whereas you gave him fine receipt of only Rs.100/- for the said challan. On this, issue the owner of goods being carried in the LGV Shri Paramveer Singh, the complainant arrived to spot and demanded receipt for total amount of Rs.600/-. After arguments you, W/SI Vinod Singh, No.2130/D had taken back fine receipt from the driver and issued another challan of court after two minutes for violation of 'No Entry' deliberately.
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> The above mentioned act of W/SI Vinod Singh, No.2130/D amounts to grave misconduct, lack of integrity, indulgence in

> corruption and misuse of your official position, which renders you liable to be dealt with departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980 read with Delhi Police Act-1978."

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 as well as the relevant rules regarding holding of the departmental inquiry examined PW 1 to PW6 and DW1 and after discussing the entire evidence of all the witnesses and carefully considering the defence statement given by the applicant came to the conclusion that the charge leveled against the applicant was proved. The inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority after examining the findings of the inquiry report and going through the deposition of the witnesses and after carefully considered the representation made by the applicant against the inquiry report and hearing the applicant in orderly room when the applicant admitted to have committed the misconduct by stating that she has not issued two challans and on that basis the disciplinary authority imposed a penalty of forfeiture of one year approved service permanently on the applicant vide order dated 21.02.2013. The applicant filed an appeal. The appellate authority also considered the entire deposition of all the witnesses and the grounds raised by the applicant in his appeal and reduced the penalty from forfeiture of one year approved service permanently to that of forfeiture of one year approved service temporarily for a period of one year vide order dated 26.09.2013.

5. The counsel for the applicant vehemently contended that the inquiry officer cross-examined the defence witness DW1 as such it goes to the very route of the case and in view of the observations made in the judgment in the case of **Commissioner of Police and Ors.** Vs. **Bikram Singh** (W.P (C) 3466/2010 by the Hon'ble High Court of Delhi, the entire departmental proceedings should be held to be bad in law. He further contended that it is a case of no evidence, the findings are perverse and the orders passed are non speaking orders.

6. The counsel for the respondents equally vehemently submitted that even if the DW1 is held to be cross-examined by the inquiry officer, no prejudice is thereby caused to the applicant in view of the fact that there is sufficient evidence which is available by way of the deposition of PWs1 to PW6, as such the findings of the inquiry officer cannot be held to be perverse. We have perused the inquiry report. There is sufficient material on record to hold that the charge leveled against the applicant was proved. Moreover, the applicant herself has admitted before the disciplinary authority that she has committed the mistake. The impugned orders passed by both the disciplinary authority and appellate authority are well considered reasoned and speaking orders and there is no violation of principles of natural justice.

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.
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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:
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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;

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 as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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