CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 4156/2014

New Delhi this the 29th day of March, 2019

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

Sh. Manmohan Krishan (Retd.),
S/ S.Mohan,
Aged about 57 years,
R/o Flat No. 513, Azad Hindu Apartments,
Plot No. 15, Sector-9, Dwarka,
Delhi-110077. … Applicant

(By Advocate: Mr. Malaya Chand with Sh.S.P.Mitra)

VERSUS

Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA, New Delhi. … Respondent

(By Advocate: Ms. Sriparna Chatterjee)

O R D E R (ORAL)

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

We have heard Mr. Malaya Chand, counsel for applicant and Ms. Sriparna Chatterjee, counsel for respondent, 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 orders of the Appellate Authority (Annexure-A/1) and Disciplinary Authority (Annexure-A/2).

(B) To quash and set aside the impugned charge sheet (Annexure-A/4) and subsequent inquiry proceedings/findings of inquiry officer (Annexure A/3) in the interest of justice.

(C) Such other/further orders, the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case be passed in favour of the petitioner and against the respondents, in the interest of justice."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant under Regulation 25 of DDA Conduct, Disciplinary and Appeal Regulations 1999 for processing the tender without discussing three additional conditions in the WAB Agenda item put forth by a agency without seeking approval either for acceptance or rejection of those three conditions. The detailed summary of allegations is extracted below:

> "ARTICLE-1
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> That the said Sh. Man Mohan Krishan, while functioning as AFO in FO office/CE/SWZ/DDA, processed the tender for submission to WAB without discussing 3 additional conditions in the WAB agenda item put forth by the agency and no approval of WAB was sought either for acceptance or rejection of these 3 conditions in the negotiation letters No. BIL/DDA/2007/164, dated 28.7.07, BIL/DDA/2007/165, dated 28.7.07, BIL/DDA/2007/169, dated 30.7.07, BIL/DDA /2007/ 168, dated 30.7.07, BIL/DDA/2007/166, dated 28.7.07, BIL/DDA/2007/167, dated 28.7.07.
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> ARTICLE-2
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> That the said Sh.Man Mohan Krishan, while functioning as AFO in FO office/CE(SWZ) DDA, processed the acceptance letters of the agency vide which negotiations letters of the agency containing 3 additional conditions were conveyed for making it part of the agreement resulting into avoidable claims which could ultimately financial loss to the authority.
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> That the said Sh. Man Mohan Krishan, AAO by his above act exhibited lack of devotion to duty and conduct unbecoming of an employee of the Authority thereby violating sub-rule 1(i) & 1(iii) of Regulation 4 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999."

4. Alongwith the article of charge, statement of imputation of misconduct, list of witnesses and list of documents 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, taken on record the evidence both documentary and oral adduced before

him and taken on record the defence statement filed by the applicant and assessed the evidence and came to the conclusion that articles of charge leveled against the applicant were proved vide his inquiry report dated 15.05.2012. The relevant portion of the conclusion is extracted below:

> "CONCLUSION:
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> On the basis of documentary and oral evidence adduced before me during the inquiry as well as on the basis of DDA Conduct, Disciplinary and Appeal Regulations, 1999 and after careful assessment of the above as deliberated in foregoing paras, I here by hold the charges framed against Sh. Man Mohan Krishan, AFO, DDA are proved/Not proved as under:
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> ARTICLE-1 PROVED
>
> ARTICLE-2 PROVED"

The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering the entire evidence and also considering the grounds raised by the applicant in his representation against the inquiry report imposed a penalty of reduction of pay by two stages with cumulative effect upto the date of retirement vide order dated 22.08.2013. The applicant filed an appeal. The appellate authority also after going through the entire material and also taking into account all the grounds raised by the applicant in his appeal and also hearing the applicant personally on 24.2.2014 rejected the appeal vide order dated 16.04.2014.

5. The counsel for the applicant vehemently and strenuously contended that inquiry officer has not appreciated the evidence properly and came to a erroneous conclusion, that the charges are vague and are framed without any basis that the Chief Engineer who ultimately signed the document has taken cognizance of all the conditions put his

signatures, and that the orders passed by the disciplinary authority and the appellate authority are not speaking orders. The counsel for the respondents equally vehemently submitted that the charges are not vague; that the inquiry officer has given cogent reasons based on the evidence on record in his inquiry report in coming to the conclusion that the charges were proved and that the disciplinary authority and the appellate authority both have passed a well reasoned speaking orders and he has taken us through the entire departmental enquiry proceedings as well as the impugned orders passed by the disciplinary authority and the appellate authority.

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 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:
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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;
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> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> 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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