CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3854/2013
MA 3659/2016

Reserved on 04.02.2019
Pronounced on 25.02.2019

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

Sh. Ashique Ali Khan
Aged about 56 years
S/o Late Bipat Khan
R/o Qtr No.34, Police Quarter,
Nangloi, Delhi-110041. …. Applicant

(By Advocate: Mr. S.K.Gupta)

VERSUS

Govt. of NCT of Delhi through

1. Chief Secretary,
Govt. of NCT of Delhi
Players Building, IP Estate,
New Delhi.

2. Commissioner of Police
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

3. Joint Commissioner of Police
(South Western Range)
Police Headquarter, MSO Building,
I.P. Estate, New Delhi.

4. Dy. Commissioner of Police,
(South West Distt.)
Sector-19, Dwarka, New Delhi. … Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

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

We have heard Mr.S.K.Gupta, 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:

> "(i) quash and set aside the punishment order dated 07.11.2012 (Annexure A-1), order dated 25.05.2013 (Annexure A-2) and findings dated 10.08.2012 of the inquiry officer (Annexure A-1/A);
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> (ii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

3. The relevant facts of the case are that on the allegation that because of the conduct on the part of the applicant in not taking prompt and immediate action in taking police remand so as to obtain recovery of the stolen property and arrest of receiver of the stolen property, a summary of allegation was served on the applicant. The said summary of allegation is extracted below:-

> "It is alleged against SI Ashique Ali Khan, No. 2686/D (PIS No.28760999) that while he posted at PS Baba Haridass Nagar and investigating officer of case FIR No. 122/11 u/s 356/379/34 IPC PS BHD Nagar, he formally arrested two accused persons namely Jitender and Hemant on 28/8/11 at Dwarka Court premises. Both the accused were sent to J.C as TIP was to be conducted in the case and then police remand was to be obtained for recovery and arrest of receiver of stolen property. The same was dropped by the court on his request as he moved an application for release of both the accused on 15/9/11. Accordingly Hon'ble Court of Sh. Sushant Changotra, MM, Dwarka Court issued notice to SHO/Baba Hari Dass Nagar for 19/9/11. Hon'ble Court asked the SHO as to how he has forwarded such application without using other options? On going through the said application it was found that the same was forwarded by SI Narsingh No. D-2606 (posted at PS Baba Haridas Nagar) and not by the SHO. On perusal of the file, it was found that as per the confessional statements, IO should have opted for police remand for the recovery of chain and arrest of receiver of snatched property, but no such attempt was made. This should have been done within 14 days of arrest. Hon'ble Court also directed verbally to take action as deemed fit against the IO. The department has left with no alternate accept to get the accused released after filing final report in this case.

> The above act on the part of SI Ashique Ali Khan, No. 2686/D (PIS No. 28760999) amounts to gross misconduct, carelessness and dereliction in discharge of his official duties and unbecoming of a police officer, which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

4. Alongwith the summary of allegation, list of witnesses and list of their statements were served on the applicant. As the applicant did not admit the allegation against him, an Inquiry Officer was appointed. The Inquiry Officer conducted the departmental enquiry complying with the principles of natural justice as well as the rules governing holding of departmental enquiry and examined PW1 to PW6 and taken on record the defence statement of the applicant and discussed the evidence brought on record in the departmental enquiry and while discussing the evidence the inquiry officer considered three distinct aspects of the charge and held that first aspect was not proved and two other aspects were proved vide his inquiry report dated 10.08.2012. The inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority after considering the entire evidence brought on record in the disciplinary proceedings and also carefully considering the representation filed by the applicant against the inquiry report and hearing the applicant in orderly room on 1.11.2012 awarded the penalty of forfeiture of three years approved service permanently on the applicant vide order dated 7.11.2012. The applicant filed an appeal. The appellate authority also after carefully considering the entire evidence before the inquiry officer and also considering all the grounds raised by the applicant in his appeal reduced the penalty of forfeiture of three years approved service to the penalty of forfeiture of one year approved service permanently vide order dated 24.05.2013.

5. The counsel for the applicant vehemently and strenuously contended that the inquiry report is perverse and that it is a case of no evidence and that the orders passed by the disciplinary authority and the appellate authority are perverse. We have perused the inquiry report, the depositions of the witnesses, the discussion of the inquiry officer and also the orders passed by the disciplinary authority and the appellate authority and found that they are not perverse in nature. They are all well considered cogent and reasoned speaking order.

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.
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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 receivh es 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."

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 is devoid of merit.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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