CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 4085/2011
MA 3052/2011

Reserved on 19.11.2018
Pronounced on 12.12.2018

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

Shri Narendra Kumar aged about 51 years
S/o Late Shri Shyam Lal Tyagi,
Ex. VM (MV), T No. 3862
Presently dismissed from Gp. 'C'
Post of 'Defence Civilian' Trades Man
From 510 Army Base Workshop under
DG EME, MGO's Branch AHQ,
Ministry of Defence R/o
C/o Shri B.D.Sharma Advocate
WZ-26 Manohar Park (Opposite Ram Pura)
Rohtak Road, Delhi-110026. … Applicant

(By Advocate: Mr. V.P.S. Tyagi)

VERSUS

1. The Union of India (Through Secretary)
Ministry of Defence, South Block,
New Delhi-110011

2. The DG, EME (Civ)
MGO's Branch AHQ
DHQ PO New Delhi.

3. The Commander,
HQrs Army Base Workshop,
Group EME, Meerut Cantt. (UP).

4. The Commandant
510 Army Base Workshop
Meerut Cantt. (UP).

5. Lt.Col. J.P. Singh
Inquiry Officer, Through Commandant
510 Army Base Workshop
Meerut Cantt. … Respondents

(By Advocates : Mr. R.V.Sinha with Mr. Amit Sinha)

O R D E R

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

Heard Mr. V.P.S.Tyagi, counsel for applicant and Mr. R.V.Sinha, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

> "(a) Quash and set aside the impugned orders (A-1) (A-2) and direct the respondents to reinstate the applicant in the same position from which his services were dismissed with payment of all consequences benefits and payment of pay and allowances with arrears from the date it fell due till date of payment is made by inclusion of 18% interest thereon.
>
> (b) Direct the respondents to expunge the adverse remarks passed and recorded in his service records if any.
>
> (c) Pass any order or direction as deemed just and proper in the facts and circumstances of the case with award of exemplary cost in favour of the applicant against the respondents.
>
> (d) Direct the respondents to hold the inquiry proceeding if any during the period 15.2.2010 to 19.5.2010 as nullity which cannot be taken into account, by also calling the record of the proceeding conducted in the C of 1 by the Board of Officers."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant on 4.11.2009 under rule 14 of the CCS (CCA) Rules, 1965 on the allegation that the applicant was involved in a theft of Tatra Spares from KRG Group on 19.09.2009, etc.

4. As per the procedural rules, list of witnesses, list of documents and statement of imputation of misconduct were furnished to the

applicant. As the applicant did not plead guilty, an Inquiry Officer was appointed and departmental enquiry was held. The Inquiry Officer following the principles of natural justice and the relevant procedural rules conducted the enquiry and examined the witnesses and came to the conclusion that the charge levelled against the applicant was proved vide his enquiry report dated 18.06.2010. The applicant in the first round of litigation had challenged the memorandum of charge sheet dated 04.11.2009 and the appointment of Inquiry Officer by filing OA No. 927/2010. This Tribunal vide order dated 26.03.2010 directed the respondents to consider the representation of the applicant dated 15.02.2010 and pass a reasoned and speaking order. The respondents complied with the order of the Tribunal. This is second round of litigation. The disciplinary authority considering the representation of the applicant against enquiry report and taking into account the deposition of the witnesses and going through the entire enquiry report imposed a penalty of dismissal from service vide its order dated 30.07.2010. The applicant filed appeal on 09.09.2010. The appellate authority considered all the ground raised in the appeal filed by the applicant and rejected the appeal vide its order dated 15.02.2011. The applicant has challenged the inquiry report, order passed by the disciplinary authority and the appellate authority in this OA.

5. The counsel for the applicant vehemently and strenuously contended that the material before the Court of enquiry which was conducted earlier following Army Rules of holding Court Marshal were relied upon in the departmental enquiry. That the applicant was not given an opportunity of cross-examination and that the applicant was

not given an opportunity to produce the defence witnesses. As such the inquiry report is vitiated.

6. We have gone through the entire inquiry report. There is no violation of principles of natural justice nor is there any violation of procedural rules while conducting the departmental enquiry. The applicant was given ample opportunity to produce his witnesses. Indeed the witnesses cited by the applicant were present on certain dates, yet the applicant and his defence assistance did not examine his own witnesses in the departmental enquiry. The counsel for the respondents has taken us through the entire inquiry report.

7. We are of the view that the applicant was not put to any prejudice nor is there any violation of principles of natural justice in conducting the departmental enquiry. The Inquiry Officer after discussing the evidence which was brought on record came to the conclusion that the charge levelled against the applicant is proved.

8. 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.

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."

9. 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.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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