CENTRAL ADMINITRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 696/2014

Reserved on 16.01.2019
Pronounced on 23.01.2019

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

Ex.Nursing Orderly AK Bhagat,
No.922290796
C/o Sunil Kumar, Advocate,
Flat No. 452 A, Shipra Suncity,
Ghaziabad, UP. . … Applicant

(By Advocate: Mr. Sunil Kumar)

VERSUS

1. Union of India through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
Block No.13, New Delhi.

3. Inspector General,
Central Industrial Security Force,
Ministry of Home Affairs, C.I.S.F.
Campus, Saket, New Delhi.

4. Senior Commandant,
C.I.S.F 5th Res. Bn,
Ghaziabad. … Respondents

(By Advocate: Mr. Rajinder Nischal)

O R D E R

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

Heard Mr.Sunil Kumar, counsel for applicant and Mr.Rajinder Nischal, 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:

> "A) Quash and set aside the impugned orders dated 25.09.2012, 07.01.2013 and 18.06.2013 passed by the Disciplinary, Appellate and Revisional Authority respectively.
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> B) Quash and set aside the illegal findings dated 31.07.2012 of Enquiry Officer.
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> C) Direct the Respondents to reinstate the Applicant in the service with all the consequential benefits.
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> D) 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 applicants.
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> E) Cost of proceedings, may also be awarded to the Applicant."

3. The relevant facts of the case are that proposing to hold a departmental enquiry for major penalty proceedings, a memorandum dated 1/2 September 2006 was issued to applicant under Rule 14 of the CCS (CCA) Rules, 1965 for having accepted Rs.10,000/- as a bribe from other Constable for showing official favour and also for having demanded Rs.35,000/- from each of the others member as gratification for passing them in medical examination in recruitment to the posts of Constable in the respondents-organization. The relevant charges are extracted below:-

"Article-1

On receipt of information the office of the Senior Commandant/CISF, 5th R.Bn., Ghaziabad vide Order No.0-42013/5th R.Bn./BOO/2006/PA/8175 Dated 08.08.06 a team of three officers (Shri Surender Singh, Assistant Commandant, NIRI/Work D.K.Singh and Assistant NIRI/Work Jugnu) was constituted through which on 08.08.06 at 1800 hours Force No. 922290796 Nursing Orderly A.K.Bhagat, CISF 05th Reserve Bn. Was caught red handed accepting bribe of Rs.10,000/- from Force No. 034380187 constable A K Jha for getting his candidates passed in the Medical Test scheduled to be held on 09.08.06 at CISF, Northern Range Hospital Saket, New Delhi. A seizure list was prepared by the constituted team

and the signature of the Nursing Orderly A.K.Bhagat was also obtained thereon. The aforesaid act of the force member shows his involvement into his misconduct and his corruption. Thus is the charge.

Article-2

Force No.922290796, Nursing Orderly A.K.Bhagat has demanded from Constable A.K.Jha Force No. 034380187 Rs.35,000/- from each member on promises and gratification for getting passed into medical examination for recruitment of constable being held at Head Qtr North Zone at Saket, New Delhi. Nursing Orderly A.K.Bhagat calling on Constable A.K.Jha at his home with bribe money, finalized all talks regarding getting candidates passed out illegally in medical examination and finalized place and time for transactions of money. The attempt to get passed candidates illegally by taking bribe and gratification of the force member, shows his involvement into his misconduct and his corruption. Thus is the charge."

4. Along with 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 charges, an Inquiry Officer was appointed. The Inquiry Officer following the relevant procedural rules and principles of natural justice conducted the departmental proceedings and after discussing the evidence on record came to the conclusion that in so far as article 1 is concerned he held that no bribe was established but, however, cheating of Rs.10,000/- from one constable Mr.A.K.Jha was established and with respect to article of charge no. 2, he held that bribe is not proved but, however, attempt to cheat was proved vide its report dated 31.07.2012. The appointing authority after perusing the inquiry report issued a disagreement note dated 23.08.2012, discussing the evidence and holding that the charges leveled against the applicant were proved. In the disagreement note, appointing authority referred to various documentary and other evidence available in the departmental

enquiry. The applicant was given 15 days time to submit his representation against the disagreement note and inquiry report. The applicant submitted the representation. The appointing authority after considering all the grounds raised by the applicant in his representation against the disagreement note and the inquiry report passed a detailed reasoned and speaking order imposing penalty of removing the applicant from service with immediate effect vide order dated 25.09.2012. The appellate authority also passed a detailed speaking and reasoned order taking into account all the grounds raised by the applicant in his appeal and dismissed the appeal of the applicant vide order dated 07.01.2013. The revisional authority also dismissed the revision petition of the applicant vide order dated 18.06.2013.

5. The counsel for the applicant submitted that the findings of the Inquiry Officer were correct. The Inquiry Officer instead of holding that he had taken bribe, had come to the conclusion that he has taken money and thereby he cheated the victims. The counsel for the applicant strenuously contended that finding of the disciplinary authority in the disagreement note in holding the said amounts are part of the bribe is perverse. We have gone through the material, including the opinion of the disciplinary authority expressed in the disagreement note as well as in the impugned order of dismissal passed by the disciplinary authority and the appellate authority. The orders are speaking and well reasoned orders and are not perverse.

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:-
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> "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 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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