CENTRAL ADMINITRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2790/2013
MA 2146/2013

Reserved on 22.11.2018
Pronounced on 12.12.2018

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

Smt. Indu Chawla,
Working as Office Supdt.
Delhi Division, Northern Railway,
State Entry Road, New Delhi. . … Applicant

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Additional Divisional Railway Manager (T),
DRM Office, Northern Railway, State Entry Road,
New Delhi.

3. Sr. Divisional Personnel Officer,
DRM Office, Northern Railway, State Entry Road,
New Delhi.

4. The Divisional Personnel Officer,
DRM Office, Northern Railway,
State Entry Road, New Delhi. … Respondents

(By Advocate: Mr. Shailendra Tiwary)

O R D E R

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

Heard Mr. Yogesh Sharma, counsel for applicant and Mr.Shailendra Tiwary counsel for respondents, perused the pleadings and all the documents.

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

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the penalty order dated 29.11.2005, Appellate Authority order dated July, 2009, Revisional Authority order dated 20.06.2011, Charge Sheet dated June, 2002 and Inquiry Officer report and complete inquiry proceedings declaring to the effect that the same are illegal, unjust, arbitrary and against the principle of natural justice and consequently pass an order directing the respondents to grant all the consequential benefits including the restoration of post, pay of the applicant deem no penalty order has been issued along with the arrears of difference of pay and allowances.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 for major penalty proceedings on the charge that while working as Senior Clerk, the applicant accepted a bribe of Rs.200 on 13.09.1995 from Shri Madhu Sudan Lall for processing his file. The said charge is as under:-

> "Statement of articles of charge framed against Smt.Indu Chawla, Sr. Clerk, P-1, Section DRM Office, New Delhi.
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> That the said Smt. Indu Chawla, while working as Sr.Clerk P-1 Section DRM Office, New Delhi during September 1995 failed to maintain absolute integrity and exhibited the conduct unbecoming of a Govt. servant in as much as she accepted a bribe of Rs.200/- on 13-9-95 from Shri Madhu Sudan Lall, Sr. Signaller, Ghaziabad for processing the file of Shri Madhu Sudan Lall.
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> Thus, Smt. Indu Chawla failed to maintain absolute integrity and conducted herself in a manner unbecoming of a Govt. servant, thereby violating the provisions of Rule 3.1(i), (ii) & (iii) of Railway Servants (D&A) Rules, 1965."

4. Along with the charge sheet as per rules, the statement of imputation of misconduct, list of documents and list of witnesses were furnished to the applicant. As she did not plead guilty, an Inquiry Officer was appointed. As per the procedural rules and following the

principles of natural justice, the Inquiry Officer conducted the departmental enquiry and held that the charge leveled against the applicant is not proved vide his report dated 2.12.2004. The disciplinary authority disagreeing with the findings of the Inquiry Officer issued a disagreement memo vide his order dated 30.05.2005. The applicant submitted her representation against disagreement memo. The disciplinary authority after considering the representation of the applicant, going through the entire evidence and the admission made by the applicant under Section 313 of Cr P.C before the Criminal Court by a reasoned and speaking order imposed a penalty of reduction of the applicant to the substantive post of Office Clerk for a period of one year with cumulative effect vide his order dated 29.11.2005. The appeal filed by the applicant was dismissed by the appellate authority by recording reasons. Revision filed by the applicant was also dismissed by the Revisional authority.

5. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence. He relied upon the finding of the Inquiry Officer in support of his contention.

6. The counsel for the respondents equally vehemently brought to our notice the evidence relied upon by the disciplinary authority for recording disagreement note. From the perusal of the disagreement note it is clear that the disciplinary authority has relied upon the deposition of witnesses Shri Ved Prakash and Sh. S.R. Singh given in the enquiry proceedings itself to disagree with the finding of the Inquiry Officer. From the perusal of the order dated 29.11.2005 also it is clear that said order is reasoned and speaking order.

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:-
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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."

8. 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.

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

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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