CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2433/2014

Reserved on 19.03.2019
Pronounced on: 29.03.2019

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

R.P.Bhardwaj,
Age 52 years,
Public Health Inspector,
S/o Sh. Sri Krishan Bhardwaj,
R/o Village & PO Bawana,
New Delhi. … Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Lt. Governor of Delhi,
   Raj Niwas, New Delhi.

2. North Municipal Corporation of Delhi
   Through its Commissioner,
   Civic Centre, J.L.N. Marg,
   New Delhi.

3. The Deputy Commissioner,
   Narela Zone, Narela,
   New Delhi. … Respondents

(By Advocate Mr. R.V. Sinha with Amit Sinha)

O R D E R

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

We have heard Mr. Ajesh Luthra, 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 this OA, the applicant has prayed for the following reliefs:

> "I. Quash and set aside the memorandum/letter dated 02.07.2014 (Annexed as Ann.A-1) and the orders dated 20.4.2012, vide which the applicant has been imposed penalty and the order dated 6.9.2012, vide which the appeal has been rejected and the findings submitted by the enquiry officer.

II. direct the respondents to grant the applicant all the considering benefits.

III. 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 applicant.

IV. Cost of the proceedings be awarded in favour of the applicant and against the respondents."

3. The relevant facts of the case are that for remaining unauthorizedly absent from duty on 13.01.2009, 14.01.2009, 15.01.2009, 17.01.2009, 19.01.2009 and 23.01.2009 without prior information and also thereafter putting his signatures on the cross marks made by the higher authorities without obtaining permission and also for issuing challan to sweet shops etc. without preparing the report in the year 2008 and also for disobeying the orders of the superior**,** a statement of allegation was issued to the applicant. The details of the allegation are as follows:-

"Shri R.P.Bhardwaj was working as PHI in Health Deptt., Narela Zone during the year 2009.

He remained unauthorized absent from duty on 13.01.2009, 14.01.2009, 15.01.2009, 17.01.2009, 19.01.2009 & 23.01.2009 without prior permission and as such cross was marked by DHO.Narela Zone in the attendance register. Shri R.P.Bhardwaj, PHI put his signatures on the cross marks without obtaining any permission from DHO/Narela Zone in this regard. Therefore, Memos/letters dated 19.01.2009, 22.01.2009, 23.01.2009 and 02.02.2009 were issued to him by DHO/Narela Zone to which he also submitted his reply which was found not satisfactory.

The DHO/Narela Zone issued a letter dated 14.01.2009 to Sh. R.P.Bhardwaj, PHI for giving report with regard to the number of challans issued in the year 2008 for sweet shops, mineral water, dhabhas and restaurants. But, he did not prepare the report and his reply was found not satisfactory by DHO/Narela Zone. Shri R.P.Bhardwaj, PHI also misbehaved with DHO/Narela Zone and abused him on 02.02.2009 at 12.35 P.M. in his room in the presence of other staff.

From the foregoing, it is evident that Shri R.P.Bhardwaj, PHI failed to maintain absolute integrity, devotion to duty and committed gross misconduct in as much as he remained unauthorisedly absent from duty without prior information

> and put his signatures on the cross marks put by DHO/Narela Zone. He also failed to obey the instructions of DHO/Narela Zone as he did not prepare the report regarding challans issued in the year 2008. He further misbehaved and abused DHO/Narela Zone on 02.02.2009 in his room in the presence of other staff.
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> He, thereby, contravened Rule 3(1) (i)(ii)(iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD."

As the applicant did not admit the allegation and he gave unsatisfactory explanation, a departmental enquiry was initiated against the applicant with respect to the above stated allegation. The Inquiry Officer following the principles of natural justice as well as following the relevant procedural rules for conducting the departmental enquiry, examined PW1 and PW2 and discussed and analyzed the deposition of the witnesses and came to the conclusion that the charges leveled against the applicant were proved vide his inquiry report dated 30.03.2011. Copy of 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 taking into account the representation of the applicant passed a punishment order imposing a penalty of stoppage of one increment with cumulative effect vide order dated 20.04.2012. The applicant filed an appeal. The appellate authority also after considering the entire material on record and also taking into account the grounds raised by the applicant rejected the appeal vide order dated 28.08.2012 which was communicated to the applicant vide letter dated 6.09.2012. The applicant filed further appeal before the Lt. Governor, Govt. of NCT of Delhi. The Lt. Governor after examining the entire material came on record in the departmental enquiry and also recording the grounds raised by the applicant in his appeal came to the

conclusion that the misconduct proved against the applicant is grave in nature and further held that the punishment imposed by the disciplinary authority as well as the appellate authority is grossly disproportionate and proposing to enhance the punishment to that of dismissal from service vide order dated 26.05.2014 and the same was communicated to the applicant vide letter dated 2.07.2014 giving opportunity of 21 days to the applicant to make representation against the proposed enhancement of penalty. The applicant had challenged the above communication dated 02.07.2014 and the order of the disciplinary authority dated 20.04.2012 and the order of the appellate authority dated 28.08.2012 which was communicated to him vide letter dated 06.09.2012 by way of this application.

4. The counsel for the applicant vehemently and strenuously contended that there is no statutory appeal under the rules to be filed before the Lt. Governor and that the applicant simply filed a mercy petition before the Lt. Governor and on the said mercy petition the Lt. Governor has no jurisdiction to enhance the penalty and he further submitted that even if the mercy petition filed before the Lt. Governor is treated as a regular appeal in that event as well the Lt. Governor as an appellate authority cannot impose the punishment of dismissal from service as the disciplinary proceedings were initiated by the Deputy Commissioner and that in view of Regulation 7 and proviso (i) of Regulation 15 (c) read with clause 2(i) of Part B of Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959 the proposed punishment of dismissal is without jurisdiction. In support of his contention, the counsel for the applicant relied upon the judgment of

Hon'ble Madras High Court in the case of **Nagarajan M and Ors** Vs. **Registrar, High Court and Anr** (2003) 3 MLJ 479).

5. The counsel for the respondents equally vehemently and strenuously contended that it is the applicant who himself had filed the appeal before the Lt. Governor. Pointing to the appeal filed by the applicant Ann-A-9 of the OA, the counsel for the respondents further submitted that it is not at all a mercy petition and nowhere it is stated in the said annexure that it is a mercy petition and that it has been filed under the above stated Regulations of 1959 and he further submitted that the order dated 2.07.2014 is in the nature of Show Cause Notice (SCN) providing reasonable opportunity of 21 days to the applicant to make his representation against the said proposed enhancement of punishment and when the proceedings are pending consideration before the Lt. Governor the applicant cannot rush to this Court by filing this OA and this Court cannot adjudicate the matter at this stage. In support of his contention, the counsel for the respondents relied on para 13 and 14 of the judgment of Hon'ble Supreme Court in the case of **Union of India and another** Vs. **Kunisetty Satyanarayana** (2006) 12 SCC 28). The relevant paragraphs are extracted below:-

> "13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and anotherAIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.
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> 14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order

> which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

We have perused the entire material. In view of the law laid down by the Hon'ble Supreme Court in the case referred to by the counsel for respondents this OA is pre mature in so far as the challenge to the order-cum-letter dated 02.07.2014 issued by the Lt. Governor.

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:-
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> > "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 influence 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, as the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice in conduct of disciplinary proceedings, the OA is dismissed in so far as challenge to the impugned orders dated

20.04.2012 and 28.08.2012 are concerned; and dismissed as pre-mature in so far as challenge to the impugned order dated 2.07.2014. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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