CENTRAL ADMINITRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 4235/2013

New Delhi this the 6th day of February, 2019

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

Sh.Durga Dutt, Ex. Zerox Operator/RITES
S/o Late Sh. Jai Kishan,
Ex. Employee No. 0232,
H.No.A-52, Khasra No. 128/1,
Raj Pur Extn. Colony,
Near Ram Chander Market, Chhattarpur,
New Delhi-68 … Applicant

(By Advocate: Dr. Ch.Shamsuddin Khan)

VERSUS

1. RITES Ltd., THROUGH The Chairman,
Corporate Office: RITES Ltd.,
12th Floor, Scope Minar, Laxmi Nagar,
Delhi

   Also: RITES LTD., RITES Bhawan No.01,
Sector 29, Gurgaon, Haryana-122001

2. The Managing Director
Corporate Office: RITES Ltd.,
12th Floor, Scope Minar, Laxmi Nagar,
Delhi

   Also: RITES LTD., RITES Bhawan No.01,
Sector 29, Gurgaon, Haryana-122001

3. The Director Project,
Corporate Office: RITES Ltd.,
12th Floor, Scope Minar, Laxmi Nagar,
Delhi

   Also: RITES LTD., RITES Bhawan No.01,
Sector-29, Gurgaon, Haryana-122001. .. Respondents

(By Advocate: Mr. Atul Kumar)

O R D E R

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

We have heard Dr. Ch.Shamsuddin Khan counsel for applicant and Mr. Atul Kumar, 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). Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice, and thereafter.

(b) To quash and set aside the impugned orders dated 23.05.2007, 01.06.2011, 30.08.2011, 19.04.2012 & 16.08.2012 Annexure A-1 to A-5 issued by the disciplinary authority i.e. the charge sheet, awarding the penalty of reduction by two stages in the present time scale of pay till the date of retirement, confirmed by the appellate authority and reviewing authority respectively with all other consequential benefits after declaring the same are as illegal, unjust, arbitrary, malafide unconstitutional against the principles of natural justice, violative of the Art. 14, 16 & 21 of the Constitution of India and against the mandatory provisions of law.

(c) Allowing the O.A of the applicant with all other consequential benefits and costs.

(d) Any other fit and proper relief may also be granted to the applicant."

3. The relevant facts of the case are that a charge sheet was issued to the applicant for 6 articles of charge. Article no.1 is regarding insubordination, article no. II is for causing disorder and disruption of work by disorderly behaviour in the premises of the respondents, article of III is regarding using criminal force and preventing other members from discharging their official duties, article IV is regarding wrongful restraint and confinement of the other officials of the respondents

organization, article No. V is regarding causing insult and dishonour to the employees of the respondents organization and article of charge VI is regarding intimidation leading to offer of resignation by other employees. As per their relevant applicable rules alongwith the memo. of charge, list of documents and list of witnesses were served on the applicant. As the applicant did not admit the charges, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and the relevant rules regarding the conducting of the departmental enquiry examined as many as 10 PWs and 3DWs and taken on record 24 documents and after analyzing the deposition and taking the defence statement into account came to the conclusion that article no 1, 2 and 4 were proved, article no.5 was partially proved and article 3 and 6 were not proved vide his Inquiry Report dated 07.01.2011. The inquiry report was supplied to the applicant and the applicant made representation against the said enquiry report. The disciplinary authority after perusing the entire records and also taking into account the representation made by the applicant, by a detailed order accepted the inquiry report and imposed a penalty of reduction by two stages in the present time scale of pay till the date of retirement on the applicant vide order dated 01.06.2011. The appeal filed by the applicant was considered by the appellate authority alongwith all the records and by a reasoned and speaking order dismissed the appeal vide order dated 30.08.2011. The applicant filed review petition. The Reviewing authority also after considering the entire material on record and considering his review petition came to the conclusion that there is no merit in the review petition and dismissed the review petition vide order dated 19.04.2012. The applicant filed another petition seeking reopening of the entire

departmental proceedings which was rejected by the competent authority vide their letter dated 16.08.2012.

4. The counsel for the applicant vehemently and strenuously contended that the officer who conducted the preliminary enquiry was appointed as Presenting Officer in this case, as such there is violation of principles of natural justice and he has been prejudiced thereby. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India and Others** Vs. **Ram Lakhan Sharma** (2018) 7 SCC 670). The law down in the above said case of Ram Lakhan Sharma (supra) is not applicable to the facts of this case. The counsel for the applicant further submitted that the inquiry officer was biased and he conducted the enquiry in a unfair manner. We have perused the inquiry report. The inquiry officer indeed held some of the charges as not proved, some of the charges partly proved and some of the charges proved purely on the basis of the evidence available on record. The Inquiry Officer gave reasonable opportunity to the applicant to lead his evidence as such we do not find any unfairness on the part of the inquiry officer.

5. 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 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 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 influenced 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;

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."

6. 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.

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

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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