CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3475/2014

Reserved on 26.03.2019
Pronounced on 29.03.2019

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

Head Constable Sushil Sharma
H.C. No. 280/SD, Age - 52
PIS NO. 28901569
Distt. Line/SD, Delhi

... Applicant

(By Advocate: Mr. Gyanendra Singh)

VERSUS

1. The Commissioner of Police
   PHQ, MSO Building
   I.P. Estate, New Delhi.

2. The Deputy Commissioner of Police
   South District, New Delhi

3. The Joint Commissioner of Police
   South Eastern Range New Delhi

... Respondents

(By Advocate: Ms. Asiya Khan for Ms. Rashmi Chopra)

O R D E R

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

We have heard Mr. Gyanendra Singh, counsel for applicant and Ms. Asiya Khan for Ms. Rashmi Chopra, 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) To quash and set aside the Impugned Order Number/11169-238/HAP (P-II)/SD dated New Delhi, dated 13.6.2013, vide which a major penalty of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in their pay in respect of SI (Exe.) Dhirender No.D/3859 (PIS No. 16100071), HC Rajesh, No. 117/SD (PIS No. 28980677), HC Sushil Sharma, 280/SD (PIS No 28901569), Ct. Rahul No. 1466/SD (PIS 28061588) and Constable Sohanvir Singh No. 1654/SD (28882304). The above mentioned upper and lower subordinates are also reinstated from suspension with immediate effect. Their suspension period from 15.10.12 to the date of issue of this order is hereby decided as a period not spent on duty for all intents and purposes, without appreciating the facts and circumstance of the case.
>
> ii) To quash and set aside the Impugned Appellate Order Number (74/2013)273-75/SO/SER(AC-II) dated Delhi the 08.01.2014, whereby the appeal of the applicant has been summarily rejected by the Appellate Authority, even without disposing of the contentions of the applicant, which he has raised in his appeal.
>
> iii) To quash and set aside Impugned charge sheet dated 30-3-2013.
>
> iv) To quash and set aside Impugned findings dated Impugned Findings dated 7-5-2013, whereby the charge was proved against the applicant.
>
> v) To quash and aside the Order No. 1102-04/PA-DCP/SD dated 1.6.2014, passed by the Deputy Commissioner of Police, South District, New Delhi vide which the name of the applicant was brought on the secret list, w.e.f. 13.6.2013 for the period of three years, vide order No. 8150-52/VIG/CA (AC-IV) dated 22.8.2014.
>
> vi) Cost of the proceedings may also be awarded in favour of the Applicant and against the respondents.
>
> vii) 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."

3. The relevant facts of the case are that on the allegation of pressurizing the complainant Dr. V.K.Singh, Dy. Director (VS), South Delhi Municipal Corporation to change the contents of the complaint and on refusal to make changes in the complaint they lodged the complaint as per their convenience stating that the accused Md.Nadeem, the accused in that case, fled from the scene of the offence taking advantage of the crowd, and that though the said accused Md. Nadeem was handed over to the applicants and they allowed him to ran away. The summary of allegation is extracted below:

> "Dr. V.K.Singh, Dy. Director (VS) South Delhi Municipal Corporation, South Zone, Green Park, New Delhi vide letter No.449-A /DDVS /SZ /12, dated 06.09.12 intimated that in order to check and control the illegal sale/slaughtering of animals, the staff of the Veterinary Services Department was conducting survey and raids on various areas/places suspected for commissioning of such acts in South Zone of South District, MCD. On 04.09.12, at about 9.30AM, he alongwith two staff members was on inspection of the meat shops in Village Shahpur Jat area during which he get an information that a person namely Md. Nadeem @ Kale and his brother Md.Mobeen @ Chander were selling cow meat at shop No. E-222, Village Shahpur Jat, Delhi-29. On receipt of this information, they arrived at the shop wherein it was found that both the above persons alongwith their two servants were selling the meat of illegally slaughtered animals as the meat had no stamps of Municipal Slaughter House, Ghazipur and tax coupons required for slaughtering of animals at Slaughter House. On further examination of the meat, it was noticed that the meat belongs to cow or its progeny. In the meantime, Md. Mubeen and both of his servants escaped from the shop but Md. Nadeem was retained and confined by the inspecting team of SDMC in the shop itself. In the meantime, police was also informed by dialing PCR telephone No. 100.
>
> On arrival of HC Rajesh Kumar, No. 117/SD, Ct. Sohanvir Singh, No. 1654/SD from PS Hauz Khas, Md.

Nadeem was handed over to them. Dr. H.C. Dandotiya from Animal Husbandry Deptt., GNCTD who arrived in the meantime at site, collected two samples of the meat from the above shop, which were duly sealed and signed by Dr. H.C. Dandotiya, HC Rajesh Kumar and the Dy. Director (VS) of SDMC. After completion of the required formalities at the site including sealing of the shop in question, police personnel of Hauz Khas police station taken away Md. Nadeem @ Kale under their custody to the police station from the shop. Dr. V.K.Singh, Dy. Director (VS) made a written request elaborating the facts to lodge FIR in this regard, which was duly received/acknowledged by SI Dhirender, No. D/3959. But to his surprise SI Dhirender, No. D/3859, HC Rajesh Kumar, 117/SD, Beat Staff HC Sushil Sharma No.280/SD, Ct.Rahul No.1466/SD and Ct. Sohanvir Singh No. 1654/SD pressurized him to make change in the complaint that the culprit Md. Nadeem also ran away from the scene by taking advantage of the crowd instead it was handed over by him to Delhi Police. On his refusal to make the change in his complaint as desired by the above police personnel, the police officers lodged the FIR No.240/12 dated 04.09.12 as per their convenience mentioning therein that Md. Nadeem @ Kale while was being tried to hand over to the police fled from the scene by taking the advantage of crowd, which is totally incorrect, false and baseless. The fact is that Md. Nadeem was handed over to the above police personnel by Dr. V.K.Singh, Dy. Director (VS) and his staff on the scene of crime who deliberately allowed the culprit to flee from their custody, which is a very serious act committed by the above said police personnel.

The sale of cow meat/slaughtering of cow and cow progeny is prohibited in Delhi under the Delhi Agricultural Cattle Preservation Act, 1994 hence, the offence committed by Md. Nadeem, Md. Mobeen alongwith their servant is non-bailable.

The matter was got enquired by CP/PG Cell/SD, which revealed that local police did not take the matter professionally with seriousness resulting in escaping of the accused. Later on, the accused Md. Nadeem @ Kale was arrested on 10.09.12. During enquiry, Dr. V.K.Singh, Dy. Director (VS), South Zone was contacted on telephone, who stated that the locality (Shahpur Jat) is a Hindu dominated and there was no huge crowd and local police intentionally allowed the accused to escape. His statement was recorded on 01.10.2012, in which he stated that his complaint dated 04.09.12 and the letter No. 449-A/DDVS/SZ/12, dated 06.09.12 are his statement in the matter. Later on, the statements of Shri Man Singh (SK), Cattle Department, South Zone, MCD and Shri H.C.Dandotiya, I/C Veterinary Hospital, Fatehpur Beri, New Delhi were also recorded on 04.10.2012 and 30.10.2012 respectively who

> corroborated the statement of Dr.V.K.Singh, Dy. Director (VS), South Zone.
>
> The above act on the part of you SI (Exe.) Dhirender, No. D/3859 (PIS No. 16100071), HC Rajesh, No. 117/SD (PIS No. 28980677), HC Sushil Sharma, No. 280/SD (PIS No. 28901569), Ct. Rahul No. 1466/SD (PIS No.28061588) and Constable Sohanvir Singh No. 1654/SD (PIS No.28882304) amounts to gross misconduct and unbecoming of a police officer, which renders you liable for departmental action under the provisions of CCS Conduct Rules, 1964 and Delhi Police (Punishment and Appeal) Rules-1980."

4. Along with the summary of allegation, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegations, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and the relevant procedural rules conducted the departmental enquiry and examined PW1 to PW7 and DW1 to DW6 and perused the defence statement submitted by the applicant. After discussing and analysing the depositions which were brought on record, the Inquiry Officer came to the conclusion that the charge against the applicant was proved vide his inquiry report dated 07.05.2013. The disciplinary authority after considering the representation of the applicant against the inquiry report and after perusing the depositions and the inquiry report and after hearing the applicant in orderly room, awarded a penalty of forfeiture of one year approved service temporarily for a period of one year on the applicant. The

appeal filed by the applicant was rejected by the appellate authority by a speaking and reasoned order.

5. The counsel for the applicant vehemently submitted that the inquiry officer has not taken into account the depositions which were in favour of the applicant and he has selectively taken into account the deposition which was against the applicant in the departmental enquiry and he has further submitted that there is violation of Rule 15 (3) and 16 (3) of the Delhi Police (Punishment and Appeal) Rules, 1980.

6. We have perused the entire inquiry report. Though it is a joint enquiry, but however the inquiry officer has properly appreciated the evidence of all the witnesses before coming to the conclusion that the charge levelled against the applicant was proved. There is sufficient evidence before the inquiry officer to come to that conclusion. The orders passed by the disciplinary authority as well as appellate authority are also well considered and reasoned orders. The question of violation of Rule 15 (3) and 16(3) does not arise in this case as there is no preliminary enquiry conducted in this case as submitted by the counsel for the respondents.

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:-
>
> > "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 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 requires to be dismissed.

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

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/akshaya/