**CENTRAL ADMINISTRATIVE TRIBUNAL**
**PRINCIPAL BENCH: NEW DELHI**

O.A. No.3981 of 2014

Orders reserved on : 14.02.2019

Orders pronounced on : 26.02.2019

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

Sh. Bhikhari Lal Bharti, Age-53 years,
Ex. Conductor, DTC
S/o Late Sh. Attar Singh,
Village & P.O. – Asaura,
District – Hapur,
Uttar Pradesh.

....Applicant

(By Advocate : Shri R.P. Kapoor)

VERSUS

1. Delhi Transport Corporation,
Through its Chairman,
D.T.C., I.P. Depot,
New Delhi.

2. The Dy. CGM(South),
O/o of Regional Manager (South),
Vasant Vihar Depot,
New Delhi.

3. The Depot Manager,
Delhi Transport Corporation,
Govt. of N.C.T. of Delhi,
Kalkaji Depot, New Delhi.

.....Respondents

(By Advocate : Shri Jatin Parashar for Mr. Ajesh Luthra)

**O R D E R**

**Ms. Nita Chowdhury, Member (A):**

By filing this OA, the applicant is seeking the following reliefs:-

"(i) To quash and set aside the order date 12.11.2013 whereby the extreme punishment, i.e., removal

from service is being imposed upon the applicant and order of Appellate Authority dated 25.09.2014 whereby the statutory appeal of the applicant has been rejected and to further direct the respondent that applicant be reinstate back in service to the post of Conductor forthwith with all consequential benefits including seniority and promotion and pay & allowance.

(ii) That quash and set aside the order dated 22.10.12 whereby D.E. is being initiated against the applicant.

(iii) To quash and set aside the Finding of Enquiry Officer.

Or/and

Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

2. The brief facts of the case as stated in the OA are that the applicant, who was working as Conductor in Delhi Transport Corporation since 14.10.1982, received a chargesheet dated 20.10.12 under Clause 15(2) of the DRTA (Conditions of Appointment and Service) Regulation, 1952, the contents of which read as under:-

"1. Your duty was at Bus No.-2990 Route No.-33 on 19.09.2012. During checking at Shahadara Border around 05.30 it was found that you had issued a bogus tickets to passenger and same was not shown in Margpatrak and further a excess cash of Rs.266/- has been found. Further you misbehaved with employees and denied to give the complaint book.

2. Your Act is in violation of corporation Rule.

3. Your Act is against the corporation Reputation.

4. The above act caused a financial loss to Corporation.

> Your above act is in violation of section 19 (G), (F), (H), (M) (B) of Corporation Rules.
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> The charge sheet is based on copy of Report No.66668 and your record should be keep in mind while taking the final decision.
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> Your clarification should be reached to undersigned within 10 days from the receipt of this charge sheet. If you want to see any record in that case you have to report to undersigned within 24 hours from the receipt of this charge sheet. If you fails to give any reply within 10 days in that case ex-parte decision will be taken without informing to yourself."

2.1 The applicant submitted his defence statement to the said Memorandum dated 22.10.2012 and the disciplinary authority after considering the said defence statement of the applicant ordered initiation of enquiry against the applicant. Accordingly enquiry proceedings were initiated against the applicant in relation to the said chargesheet and the inquiry officer after completion of inquiry submitted his report holding that the charges levelled in the said chargesheet against the applicant is found proved. The disciplinary authority after receipt of the said report of the inquiry officer issued a Memorandum dated 8.10.2013 to the applicant wherein it was tentatively opined that applicant be removed from the service of the respondent Corporation and applicant was given an opportunity to submit his representation within 10 days. When the applicant did not submit his representation to the said Memorandum, the disciplinary authority vide order dated 12.11.2013 removed the applicant

from the service of the respondent – Corporation w.e.f. 13.11.2013 and subsistence allowance paid to him during suspension period was considered adequate.

2.2 The applicant filed his appeal on 27.12.2013 and when after lapse of certain months, no decision had been taken by the respondent – Corporation, the applicant preferred OA No.1645/2014 and this Tribunal vide Order dated 15.5.2014 disposed off the same with the following observations:-

> "This OA has been filed against the impugned order dated 22.10.2012 by which charge sheet was issued to the applicant on the final order dated 12.11.2013 by which the order of penalty of removal from service to the post of Conduct w.e.f. 13.11.2013 under clause 15(2) (vi) of the DRTA (Conditions of Appointment and Service) Regulation, 1952. Accordingly to the applicant he has filed a statutory appeal on 27th December 2013 with the respondent No. 3 and thereafter months have elapsed from the date of filing the statutory appeal of applicant but no decision has been taken by the Appellate Authority. The said appeal has not been disposed of.
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> 2. Sh. Ajesh Luthra enters appearance on behalf of respondent and states that he has not taken any instructions from the respondent' organization; yet however, since the applicant has sought the statutory remedy by way of filing an appeal, respondent shall take action to dispose of the appeal in consonance with the relevant rules and instruction and decide the same. Learned counsel for the respondent states that a further two months' time be granted for the above-noted purpose.
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> 3. We are satisfied that respondents would take action as stated by the counsel for the respondents, Sh Arjesh Luthra, Respondents shall thereafter pass a speaking and reasoned order to be communicated to the applicant within the aforesaid period. Order accordingly.

2.3 In pursuance of the said Order of this Tribunal, the appellate authority considered the appeal of the applicant and observed that the appeal of the applicant has been rejected due to time-barred and the applicant has been communicated the decision vide letter dated 28.1.2014, however, in compliance of the said Order of this Tribunal, the appellate authority considered the applicant and rejected the same vide order dated 25.9.2014, which decision of the appellate authority was communicated to the applicant vide letter dated 2.10.2014.

2.4 Being aggrieved by the aforesaid orders of the disciplinary and appellate authorities as well as order dated 22.10.2012 vide which disciplinary proceedings were initiated against the applicant, the applicant has filed this OA for redressal of his grievances.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant was appointed as Retainer Crew Conductor on 4.1.1983 and brought on monthly rates of pay w.e.f. 3.4.1984. During his stay, he was suspended several time for the offence of non issue of tickets after collecting due fare and awarded punishment of censure, stoppage of his next due increments, reduction of lower stage. His past record is very gloomy. They further stated that the applicant declared cash as Rs.1406/- and actual cash was excess by Rs.266/- and remarks has

been given on the challen but due to creation of bad atmosphere, cash in hand was mentioned Rs.1366/- instead of Rs.1406/-. The reply in response to chargesheet daed 22.10.2012 has been considered by the disciplinary authority and case was entrusted to EO (SBU) for conducting detailed enquiry into the case when the reply of charge sheet was not convincing. The witness to the facts alleged in the chargesheet has been given at the spot on challan issued by the checking officials without any protest. The statement given by the driver Sh. Jagmander Singh, B. No.24946 immediately after the checking by the Corporation checking staff was later resiled from by him and the same was not accepted by the inquiry officer as the said Driver had given initial statement at the spot on challan issued by the said checking staff without any protest earlier. All the facts and material available in the case have been considered by the enquiry officer and report submitted by the E.O. (SBU) is as per rule and laid down procedure. The enquiry into the case has been conducted as per rule and laid down procedure. Full opportunity was given to the applicant to defend himself. The punishment awarded to him is as per rule and laid down procedure and on the basis of gravity of offence committed by him with the reasoned speaking orders have been passed by the disciplinary and appellate authorities as all the points

raised by the applicant in his appeal have been dealt with by the appellate authority.

4. Applicant has also filed his rejoinder reiterating the contents of the OA and denying the averments made in the reply filed by the respondents.

5. Heard learned counsel for the parties and perused the pleadings available on record.

6. Counsel for the applicant submitted that appellate as well as disciplinary authorities orders are non-speaking orders, finding of the inquiry officer are illegal and arbitrary and the same are violation of principles of natural justice.

6.1 Counsel for the applicant further submitted that charges alleged excess cash of Rs.266 (1366-1140), as per calculation of checking staff) found with the applicant in chargesheet is factually wrong whereas the actual total of Rs.1366-1140 is Rs.216/- and as such wrong charge has been proved in departmental enquiry by the enquiry officer thus making the EO's report as bad in law.

6.2 Counsel for the applicant further contended that the authorities failed to consider that the applicant never issued bogus tickets to passengers and if the checking staff found bogus tickets, they must have signed the bogus tickets by passengers as otherwise the authenticity of bogus/forged/old tickets cannot be sustainable in the eyes of law. As such counsel contended that allegations alleged against the

applicant by the chargesheet are vague and there is no specific averment that what conduct/behavior of the applicant construed as misbehaviour with raiding party.

6.3 Counsel further contended that enquiry officer has given a finding on the basis of documents which are not even exhibited or proved in the D.E., thus making a mockery of the entire process and that there is non-examination of material witness such as passengers from whom the so called tickets were recovered or any other passenger travelling in bus during the so called raiding party and thus it is clear that applicant has been falsely implicated.

6.4 Counsel for the applicant further argued that evidence of his defence witness has not been considered in true sense by the EO and as such the finding which is based on the evidence of the prosecution only is not sustainable in the eyes of law as held by the Hon'ble High Court in the case of ***UOI vs. G. Krishna***.

6.5 Counsel also submitted that findings of the EO is based on suspicions and surmises and does not deal with the evidence that has come on record in the D.E. and thus the finding are perverse and are liable to be rejected by this Tribunal.

6.6 Counsel for the applicant also contended that the punishment imposed upon the applicant is too severe and harsh in comparison to what has been proved against the

applicant and the appellate authority fails to deal the question of proportionality of punishment despite the same being specifically raised in the statutory appeal thus the appellate authority's order is bad in law.

7. Counsel for the respondents submitted that orders of the disciplinary and appellate authorities are reasoned and speaking as the disciplinary authority passed the order only when the applicant failed to submit his representation against the Memorandum issued by it tentatively proposing to impose the said punishment upon the applicant and appeal of the applicant was already rejected by the appellate authority due to it being time-barred and the said decision was communicated to the applicant vide letter dated 28.1.2014. However, the appellate authority in compliance of the aforesaid Order of this Tribunal considered the appeal of the applicant again and after elaborately analyzing the case, rejected the same vide order dated 25.9.2014.

7.1 Counsel for the respondents further submitted that the applicant was found to have Rs.1140/- of sale of tickets and private cash and actual cash of Rs.266/- was excess but due to creation of bad atmosphere cash in hand was mentioned on the waybill as Rs.1366/- instead of Rs.1406/- by the checking officials but it is clear that his cash was excess Rs.266/- at the time of checking. Counsel for the respondents further submitted that inquiry officer proved the said charges

during the course of enquiry and found that the bogus tickets were issued by the applicant. The enquiry into the case was conducted as per rule and laid down procedures and there are no procedural irregularities of any kind.

7.2 Counsel further submitted that the witness has been given by the Driver, Sh. Jagmander Singh, at the spot without any objection and as such the statement given before the enquiry officer by defence witness is not reliable as he has given witness at the spot without any protest and if any pressure was given by the checking officials, he could have given representation to the depot authority at once after completing his duty. The passengers are not bound to give the statement but independent witness of his driver was given at the spot on challan. All witnesses recorded during the course of enquiry have been considered by the enquiry officer.

7.3 Counsel also contended that the punishment imposed upon the applicant cannot be said to be highly disproportionate in the facts and circumstances of the present case as from the perusal of his past record, it is clear that the applicant was habitual to cheat the Corporation by way of Non issue of tickets after collecting due fare or sold bogus tickets and the applicant had been awarded several punishment of stoppage of his increments and reduced to lower stage. He has been placed under suspension several times during his stay with Corporation and as such the

aforesaid punishment awarded to the applicant is according to the gravity of offence and taking into consideration of his part record.

8. Before coming to the issues raised by the applicant in this OA, it is pertinent to note that 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;
> 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."

9. Keeping in view the aforesaid observations of the Apex Court, this Court finds that in this case charge levelled against the applicant, who was discharging the duties of Conductor, as quoted above, are that during checking at Shahadara Border around 05.30, it was found that applicant had issued a bogus tickets to passenger and same was not shown in Margpatrak and further a excess cash of Rs.266/- has been found and that the applicant had misbehaved with employees and denied to give the complaint book and the inquiry officer after conclusion of the said inquiry proved the charges against the applicant and on receipt of inquiry officer's report, the disciplinary authority issued a Memorandum to the applicant vide which tentatively proposing to impose the punishment of removal from service and after considering the reply to the applicant to the chargesheet dated 22.10.2012, the disciplinary authority passed the impugned order of removal from service after taking into account the applicant's past record and thereafter the appeal preferred by the applicant was also rejected by the appellate authority being time-barred. However, in compliance of the aforesaid directions of this Tribunal, the

appellate authority considered the appeal of the applicant and passed the reasoned and detailed order and this Court also perused the said Order and does not find any illegality in the said order. We also find that in the chargesheet itself, the competent authority has stated that the applicant's past record should also be kept in mind while taking the final decision and there is not specific rebuttal from the applicant to the said fact that in earlier occasion, he had not been awarded any punishment and therefore, this Court does not find any illegality in the action of the respondents taking into account the applicant's past record while passing the final order.

10. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against the applicant is concerned, It is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

> "The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

11. Having regard to the gravity of the charges levelled against the applicant and also the fact that the past record of the applicant was that he was habitual to cheat the Corporation by way of non-issue of tickets after collecting due fare or sold bogus tickets and he had been awarded several punishment of stoppage of his increments and reduced to lower stage and he was also placed under suspension several times during his stay with Corporation and the punishment awarded by the disciplinary authority vide impugned order dated 12.11.2013, we are of the considered view that punishment imposed by the impugned order dated 12.11.2013 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

12. In view of the above, and for the foregoing reasons, having regard to the aforesaid observations of the Hon'ble Supreme Court in the aforesaid cases, especially in the case of ***Union of India and others vs. P. Gunasekaran*** (supra),

we do not find any justifiable reason to interfere with the impugned orders. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.

**(S.N. Terdal)**
**Member (J)**

**(Nita Chowdhury)**
**Member (A)**

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