CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.982 of 2016

This the 7th day of March 2019

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

Sh. Hukum Singh,
Driver, Bawana Depot,
Badge No.17769, Token No.55495
Delhi Transport Corporation, Delhi,
Aged about 57 yrs, S/o Jage Ram,
R/o Village Sisana, Tehsil – Kharkhoda,
Distt. Sonipat, Haryana.

....Applicant

(By Advocate : Dr N. Gautam)

VERSUS

1. Delhi Transport Corporation, GNCTD
Through its Chairman cum-MD,
Delhi Transport Corporation,
DTC Hqrs., I.P. Estate,
New Delhi-110002.

2. Regional Manager-cum Appellate Authority (North),
Through its Chairman cum-MD,
DTC Hqrs., I.P. Estate,
New Delhi-110002.

3. Depot Manager,
Bawana Depot, DTC,
Through its Chairman cum-MD,
DTC Hqrs., I.P. Estate,
New Delhi-110002.

.....Respondents

(By Advocate : Shri Koonal Tanwar)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

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

"a) set-aside the impugned illegal speaking order dated 10.06.2014 issued by the DA rejecting the request of the applicant for quashing the order of punishment of "Stoppage of one due increment with cumulative effect" imposed vide memo dated 29.03.2005, knowing the facts that the Ld. Court has acquitted the applicant hoourably vide judgment dated 14.08.2013.

b) set aside the orders of rejection of Appeal by the Appellate Authority as intimated vide memo dated 22.11.2013.

c) direct the respondent no.1, MD-DTC to considered the request/review application of the applicant filed on 31.07.2014 for quashing the above punishment of "Stoppage of one due increment with cumulative effect" with all consequential benefits;

d) pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. Brief facts of the case are that the applicant was appointed as a Driver in Delhi Transport Corporation (DTC) having a Batch No.17769.

3.1 On 18.6.2004, the applicant was given duty to drive a bus on Route No.114-BA, Bus No.0227. While performing his duty, the applicant caused a fatal accident in which a boy namely Harish S/o Sh. Rajesh aged about 6 years, who was crossing the road near Ram Vihar Road Bus stop died due to the negligence driving of the applicant. An FIR bearing No.156/2004 under Section 279/304A of Indian Penal Code at Police Station Kanjhawala, Delhi was lodged against the applicant alleging that he was driving rash and negligently, thereafter a charge sheet dated 24.8.2004 was issued by the

respondent to the applicant and the detailed inquiry was held by the enquiry officer and after completion of detailed inquiry, the enquiry officer held the applicant guilty of rash and negligent driving and proved the charges against the applicant, as the enquiry officer found the applicant at fault for the fatal accident.

3.2 Upon receipt of the enquiry officer's report, the disciplinary authority issued a show cause notice dated 10.3.2005 to the applicant proposing a penalty of stoppage of next due one increment with cumulative effect to be awarded to the applicant.

3.3 The applicant has submitted his reply to the said show cause notice and the disciplinary authority after considering his reply found the same not satisfactory and imposed the penalty of stoppage of next due one increment with cumulative effect vide letter dated 29.3.2005. The heavy motor driving license of the applicant was also cancelled in September 2007 by the Transport Department of Govt. of NCT of Delhi for causing the fatal accident and the applicant was allowed light duty w.e.f. 31.3.2008 as per the order of PLD against producing light duty motor vehicle driving license issued by STA Delhi.

3.4 The applicant has not preferred any appeal against the penalty of stoppage of next due increment with cumulative

effect imposed upon him by the disciplinary authority vide letter dated 29.3.2005.

3.5 On 22.10.2013, the applicant preferred a written representation to the respondent stating that he has been acquitted in the aforesaid FIR/Criminal case by the Court of learned MM, Rohini Courts, Delhi vide judgment dated 14.8.2013 and requested to give increment and benefit of ACP to him.

3.6 Thereafter the case file along with other record and necessary documents was sent to the Regional Manager, DTC for consideration of his case and appropriate action and the same was rejected by the Regional Manager vide letter dated 10.6.2014. Thereafter the applicant again made representations on 31.11.2015, 12.12.2013 and 31.7.2014, the same were also replied vide letter dated 16.12.2015.

3.7 Being aggrieved by the aforesaid orders, the applicant has filed this OA seeking the reliefs as quoted above.

4. The respondents have filed their reply to which the applicant has responded by filing his rejoinder.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicant submitted that impugned order dated 10.6.2014 suffers from non-application of mind on the part of the respondents as the disciplinary authority has misinterpreted the judgment of the learned Court who

acquitted the applicant from the same charge, which was the subject matter of the disciplinary proceedings. As such the disciplinary authority has acted above the law while punishing the applicant.

6.2 Counsel also submitted that enquiry officer report is based on no evidence as all the authorities had taken stereo typed decision on the issue keeping in mind the report of the A.T.I. of the DTC Depot who was neither present at the time of occurrence of the incident nor dealt with the case.

7. On the other hand, learned counsel for the applicant submitted that holding standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different as in criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. He further submitted that it is settled law that the strict burden of proof required to establish guilt in a criminal case is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

7.1 Counsel further submitted that upon receipt of representation from the applicant after acquittal in the said criminal case, the competent authority considered the entire matter and by placing reliance on the judgment of the Hon'ble Supreme Court delivered on 28.11.2013 in the case of ***State***

of West Bengal and others vs. Sankar Ghosh in Civil Appeal No.10729/2013 rejected the representation of the applicant vide order dated 12.6.2014. Counsel further submitted that the learned MM, Rohini Courts, Delhi in the said criminal case while acquitting the applicant vide order dated 14.8.2013 observed as under:-

> "17. It is well settled law that the burden to prove the case beyond reasonable doubt lies on the shoulder of the prosecution. The accused has a right to maintain silence in the trial. Every accused is to be presumed innocent until proved guilty. The burden of proof on the prosecution is to prove the case by leading cogent, convincing and reliable evidence so as to prove the guilt of accused beyond reasonable doubt. The accused cannot be convicted on the basis of mere probabilities or presumptions. Suspicion however grave cannot take place on accused. The prosecution has failed to prove the case against the accused and therefore, the accused is entitled to be exonerated."

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:-

> "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."

(2) 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."

(3) Further 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."

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 Driver, as quoted above, are that on 18.6.2004, the applicant was given duty to drive a bus on Route No.114-BA, Bus No.0227. While performing his duty, the applicant caused a fatal accident in which a boy namely Harish S/o Sh. Rajesh aged about 6 years, who was crossing the road near Ram Vihar Road Bus stop died due to the negligence driving of the

applicant and the enquiry officer after conclusion of the said inquiry held the applicant guilty of rash and negligent driving and proved the charges against the applicant and on receipt of inquiry officer's report, the disciplinary authority issued a show cause notice dated 10.3.2005 to the applicant proposing a penalty of stoppage of next due one increment with cumulative effect to be awarded to the applicant to which the applicant has submitted his reply and the disciplinary authority after considering his reply and upon finding the same not satisfactory imposed the penalty of stoppage of next due one increment with cumulative effect vide letter dated 29.3.2005. The applicant has not preferred any appeal against the penalty of stoppage of next due increment with cumulative effect imposed upon him by disciplinary authority vide letter dated 29.3.2005. The applicant only after acquittal in the said criminal case preferred a representation to the respondents, which was duly considered by the competent authority and rejected vide order dated 10.6.2014 by holding that there is no rule which allows automatic withdrawal of punishment order on acquittal by criminal court. For arriving to the said conclusion, the competent authority placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Sankar Ghosh*** (supra). The relevant portions of the said judgment of the Apex Court read as under:

"16. We indicate that the respondent could not lay his hand to any rule or regulation applicable to the Police Force stating that once an employee has been acquitted by a Criminal Court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. In otherwise there is no rule of automatic reinstatement on acquittal by a Criminal Court even though the charges levelled against the delinquent before the Enquiry Officer as well as the Criminal Court are the same. On this aspect, reference may be made to para 27 of the judgment in ***S. Samuthiram*** (supra), which reads as under:-

> "27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

17. Regulation 4 of Chapter 19 of the Police Regulations of Calcutta, 1968, which is applicable to the case in hand, specifically provides that acquittal or discharge in a criminal proceeding shall not be a bar to award punishment in a departmental proceeding in respect of the same cause or matter. The said Regulation isextracted below for easy reference :

> **"4. Discharge or acquittal not a bar to departmental punishment. –** An order of discharge or acquittal of a Police Officer shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter."

18. Above rule indicates that even if there is identity of charges levelled against the respondent before the Criminal Court as well as before the Enquiry Officer, an order of discharge or acquittal of a police officer by a Criminal Court shall not be a bar to the award of the

> departmental punishment. The Tribunal as well as the High Court have not considered the above-mentioned provision and have committed a mistake in holding that since the respondent was acquitted by a Criminal Court of the same charges, reinstatement was automatic. We find it difficult to support the finding recorded by the Tribunal which was confirmed by the High Court. We, therefore, allow the appeal and set aside the order of the Tribunal, which was affirmed by the High Court. However, there will be no order as to costs."

10. The applicant has not preferred any appeal against the penalty of stoppage of next due increment with cumulative effect imposed upon him by the disciplinary authority vide letter dated 29.3.2005. It is only after his acquittal in the said criminal case, vide Order dated 14.8.2013, the applicant started making his representations against the said punishment order of the disciplinary authority. It is pertinent to mention that heavy motor driving license of the applicant was also cancelled in September 2007 by the Transport Department of Govt. of NCT of Delhi for causing the fatal accident and the applicant was allowed light duty w.e.f. 31.3.2008 as per the order of PLD against producing light duty motor vehicle driving license issued by STA Delhi.

11. We have also perused the said orders of the disciplinary & appellate authorities and did not find any illegality or infirmity in the said orders. Also having regard to the findings of the Enquiry Officer, we also find that enquiry officer on the basis of evidence found on record proved the charges levelled against the applicant.

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) as also in ***Sankar Ghosh*** (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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