CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.757 of 2014

This the 12th day of March, 2019

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

Sh. Udaiveer Singh,
Ex-Driver, B.No.8374, T.No.13429,
of BBM Depot, Delhi Transport Corporation,
S/o Sh. Siya Ram, Aged about 59 yrs,
R/o E-62, Shiv Vihar Colony,
Karala Village, Delhi-110081.

....Applicant

(By Advocate : Dr. N. Gautam with Ms. Swati Gautam)

VERSUS

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

2. The Regional Manager (North)
   Through CMD-DTC,
   Delhi Transport Corporation,
   I.P. Estate, N. Delhi-110002.

3. The Depot Manager,
   B.B.M. Depot-1,
   D.T.C., Delhi-110009.

.....Respondents

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

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 termination order dated 14.03.2013 and rejection of his appeal dated 29.10.2013.

b) Direct the respondents to reinstate the applicant in service with all consequential benefits;

c) pass such order 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 joined the respondent's Corporation as Driver in 1978.

3.1 Applicant further stated that on 12.8.2011, he was posted in BBM Depot-I of North Region. On 12.8.2011, 5 persons contacted the Assistant Traffic Inspector cum Duty Officer (in short 'ATI'), Sarojini Nagar Depot of respondent Corporation with some fake appointment letters for their appointment to the post of Contractual Conductors in the said depot. The said ATI brought all the five persons to the room of the Depot Manager, Sarojini Nagar Depot and on enquire it was revealed that the said appointment letters were faked and those persons stated that two persons namely Naveen Kumar and Amit Malik have arranged the said fake appointment letters and immediately police was called, all the five persons ran away from the Depot. Not only this, the said Naveen Kumar and Amit Malik, who were waiting outside the gate of Depot also flew away in their vehicle. On the contrary, the applicant was on his duty on route No.978 from 04.55 hrs. to 13.05 on bus No.8374 on the fleet of BBM Depot of North Region. The entire matter was also reported to the PS Sarojini Nagar in writing under the signature of the said ATI.

3.2 According to the applicant, during the course of enquiry by the said ATI cum duty officer, it was revealed by the bearers of the fake letters that Naveen Kumar, one of the accused is the son-in-law of the applicant whereas another accused Amit Malik is the brother-in-law, husband of elder sister of Naveen Kumar, taking into this fact, the depot authorities of Sarojini Nagar Depot, DTC involved the name of the applicant and the applicant was restrained from doing his job vide order dated 12.8.2011 for about 4 months without citing any reason. When he moved application under RTI, he was informed that he was restrained from doing his job on the directions of Regional Manager (North).

3.3 Another compliant dated 17.8.2011 was also sent to PS Sarojini Nagar under the signature of the said ATI and on 19.8.2011, all the five fake appointment letters were forwarded to the Joint Commissioner, Delhi Police, I.P. Estate, New Delhi besides one letter of Chief General Manager of the respondent Corporation for further course of action.

3.4 According to the applicant after meeting with the Chief General Manager (Admn), DTC Hqrs., the applicant was given duty and posted on the same duty in BBM Depot of North Region.

3.5 On 16.1.2012, an FIR No.15/2012 was registered in PS Sarojini Nagar under Section 420, 468, 471 & 34 of IPC in which the names of the applicant and other two accused

namely Naveen Kumar and Amit Malik were figured. After receipt of the said copy of FIR, the disciplinary authority got prepared a report dated 30.1.2012 from the Assistant In-charge and simultaneously the applicant was also placed under suspension retrospectively w.e.f. 27.1.2012.

3.6 Thereafter the respondent no.3 issued a chargesheet against the applicant on 31.1.2012 leveling the same charge as mentioned in the FIR. The applicant submitted his detailed reply to the same denying the charges levelled against him. The disciplinary authority after receipt of the reply ordered initiation of departmental proceedings against the applicant and appointed the inquiry officer to conduct the inquiry in the matter. The inquiry officer after completion of inquiry submitted her report dated 27.7.2012, returning the findings that charges proved against the applicant. Upon receipt of inquiry officer's report, the disciplinary authority issued a show cause notice to the applicant dated 3.12.2012 proposing to award the punishment of removal from service upon the applicant. In response to the said SCN, the applicant submitted his detailed reply dated 10.12.2012. However, the disciplinary authority after considering the reply confirmed the above punishment. Thereafter applicant preferred his appeal dated 4.7.2013 to the respondent no.2 against the above punishment order of the disciplinary authority, which was rejected by the appellate authority vide Memo dated

29.11.2013. The applicant has preferred another appeal to the Chairman-cum-Managing Director of DTC for redressal of his grievance, however, when he has not received the reply to the same, he has filed this OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents, they filed their reply in which they stated that the order of removal of the applicant from service of the respondent Corporation has been passed by the then disciplinary authority after considering all the facts and documents on record and also following laid down procedure. They further stated that action has been taken against the applicant on the basis of fake appointment letters, statement of 5 persons who were appointed as contractual conductors by issuing fake appointment letters to meet principle of natural justice and the applicant was given full opportunity to defend his case which he availed. There is no enmity of the disciplinary authority and violation of procedural lapse in the action of the respondent Corporation. The disciplinary action is taken against employee for committing misconduct as per the laid down procedure of the Corporation and punishment is imposed upon the employee on the basis of gravity of offence. Accordingly disciplinary action has been initiated against the applicant and punishment has been imposed upon on the basis of the gravity of his misconduct.

5. The applicant has also filed his rejoinder in which denying the averments of the counter reply and reiterating the averments made in the OA.

6. During the course of hearing, main contention of the learned counsel for the applicant is that applicant was falsely implicated in the said case on the strength of alleged involvement of applicant's involved and there is no proof of any monetary transaction in favor of the applicant in the alleged incident of five fake appointment letters and applicant has no role at all in the said incident. This fact is evident from the order passed by the learned Trial Court while granting bail to the applicant dated 9.2.2012. Counsel further submitted that extreme punishment of removal was not warranted having regard to the fact that applicant at the verge of his retirement and as such in totality of the situation, the action of the enquiry officer, disciplinary authority and the appellate authority are pre-determined. Counsel further alleged violation of principles of natural justice.

7. On the other hand, counsel for the respondents submitted that there is no violation of any procedure while conducting the disciplinary proceedings against the applicant. Counsel further submitted that on the basis of evidence came on record, the inquiry officer proved the charge levelled against the applicant and on receipt of report of inquiry officer, disciplinary authority issued a show cause notice

proposing to impose punishment of removal from service upon the applicant. Applicant submitted his reply to the same and after finding the reply being not satisfactory the disciplinary authority confirmed the said punishment. Further appeal preferred by the applicant was duly considered by the appellate authority and the same was rejected by reasoned and speaking order by the appellate authority. As such there is nothing illegal in the act of the respondents.

7.1 Counsel further submitted that so far as contention of the applicant that the learned Trial Court granted him bail on the ground that allegation against the applicant in the said criminal case is only alleged allurement and not that he has received any money, vide order dated 9.2.2012 as 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 a criminal case. 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 as in this matter.

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:-
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> > "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:
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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 Driver, are that on 12.8.2011, four persons along with on female at the Depot along with their respective fake appointment letters and claimed their appointment to the post of Contractual Conductor at the Depot. Shri Nathu Ram, ATI, Sarojini Nagar Depot, T.No.21569 took all the aforementioned persons to the chamber of Depot Manager, Shri V.K. Gautam. The Depot Manager after due examination of their appointment letters, found the same fake because on the stamp of Depot Manager instead of signature of V.K. Gautam, signature of G.K. Gautam there. When inquiry was made from all the candidates including female candidate then they informed that these appointment letters had been given to them by Amit Malik, Navin Kumar and Udaiveer (applicant), Driver, B.No.8374, BBM-I, Depot for recruitment. For issuance of fake appointment letters, FIR No.15/2012 u/s 410/468/471/34 of IPC was registered against the applicant at Sarojini Nagar, Police Station. Due to his aforesaid action it appears that the applicant had committed fraud by fake contractual Conductor appointments and by which image of the Corporation was ruined …….. (sic). His aforesaid action is clearly a misconduct under Rule 19 (B) (K) of Delhi Transport Corporation Rule. A copy of report No.677673 dated 30.1.2012 on the basis of which charges are based is annexed and the applicant was directed to report to the Depot

Manager, if he wishes to inspect the documents within 24 hours and thereafter give reply to the said chargesheet within 10 days. If he failed to give reply to the same within the said period, it is presumed that he is not interested in giving his explanation and then without informing him further proceedings in the matter will be done. Applicant gave his reply and being dissatisfied with the same, disciplinary authority ordered initiation of inquiry in the matter and the enquiry officer after conclusion of the said inquiry proved the charges levelled against the applicant and on receipt of inquiry officer's report, the disciplinary authority issued a show cause notice to the applicant vide which tentatively proposing to impose the punishment of removal from service upon the applicant. The applicant submitted his reply to the said show cause notice and the disciplinary authority passed the impugned order confirming the above proposed punishment vide order dated 14.3.2013 and thereafter the appeal preferred by the applicant was also rejected by the appellate authority after passing a detailed and reasoned order dated 29.1.2013.

10. This Court also perused the said Orders of the disciplinary & appellate authorities and did not find any illegality 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 which came on record proved charges

levelled against the applicant. It is further relevant to mention that that having regard to gravity of the charge proved against the applicant, the disciplinary authority after considering the facts and circumstances of the case imposed the aforesaid punishment which was affirmed by the appellate authority which had also passed a reasoned and speaking order. It is also a 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, the punishment awarded by the disciplinary authority vide order dated 14.3.2013, which was affirmed by the appellate authority vide order dated

29.10.2013, we are of the considered view that punishment imposed by order dated 14.3.2013 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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