CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3502/2017

Reserved on 10.10.2019
Pronounced on: 18.10.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

Prabhat Suman Sehgal,
Aged 55 years, LDC Group 'C',
S/o Sh. S.P.Sehgal,
R/o House No.F-59, Ist Floor,
Street No. 5, Virender Nagar,
Janakpuri, New Delhi-110058 … Applicant

(By Advocate: Mr. G.S.Rana)

VERSUS

1. Commissioner/ North Delhi,
Municipal Corporation, 4th Floor,
Civic Centre, Jawahar Lal Nehru Marg,
(Minto Road) New Delhi-110002

2. Deputy Commissioner/S.P. Zone
North Delhi Municipal Corporation,
Idgah Road, Behind P.S.Sadar Bazar,
Delhi-110006

3. Director of Vigilance
North Delhi Municipal Corporation,
26th Floor, Civic Centre, J.L.Nehru Marg,
Minto Road, New Delhi-110002

4. Dy. Assessor & Collector/S.P.Zone
North Delhi Municipal Corporation,
Idgah Road, Behind P.S.Sadar Bazar,
Delhi-110006 … Respondents

(By Advocate: Mr. D.S.Mahendru)

O R D E R

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

We have heard Mr. G.S.Rana, counsel for applicant and Mr. D.S.Mahendru, 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:

> "(a) to quash and set aside the impugned Suspension Order dated 11.10.1994 at ANN. A-1, Order at A-2, Inquiry Report at ANN. A-3, impugned order of penalty at ANN. A-4, and impugned order rejecting Appeal at ANN. A-5, being illegal void and arbitrary with all consequential 98reliefs/benefits i.e. arrears of pay and allowances against unlawful suspension order dated 11.10.1994 which was not reviewed before expiry of 90 days for which the applicant is entitled for full pay, seniority, confirmation, promotions and monetary benefits against unlawful order at ANN. A-4 & A-5 passed by the respondent No. 2 and 1 of this OA.
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> (b) to pass any such/other order(s) which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. The relevant facts of the case are that on the basis of complaints and on the basis of vigilance report, a departmental enquiry was initiated against the applicant for issuing forged mutation letter without obtaining the orders from the competent authority with respect to property No. 7442/2, Ram Nagar, Paharganj, etc. The details of the charges are extracted below:

> "1. He issued a mutation letter dated 26.3.92 in favour of M/s Aman Associates Pvt. Limited in r/o P.No. 1-E/2, Jhandewalan Extension, without obtaining any orders from the competent authority, while according to assessment file the above said property has not actually been mutated and was shown in the name of the previous owner in the D&C Register.
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> 2. He issued a forged mutation letter dated 16.02.93 in favour of Smt. Savitri Devi in do Property No.7442/2, Ram Nagar, Pahar Ganj, while according to assessment file, the property has not actually been mutated and was shown in the name of the previous owner in the D&C Register.
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> 3. He received Rs.2336/- and Rs.2500/- by issuance of fabricated receipt No. 764014 and 764015 dated 16.02.93 from Smt. Savitri Devi and did not deposit the same in the Municipal treasury with the result the credit could not be given to Smt. Saviri Devi for the above said receipts.

> 4. He has been running unauthorisedly absent from duty w.e.f. 21.10.93 without prior intimation and proper sanction of leave from the competent authority…."

Before the issuance of the proposal to hold an enquiry on the basis of an FIR No. 87/94 dated 5.04.1994 under sections 420/466/468/471 IPC of PS Sadar Bazar, Delhi, the applicant was suspended. The applicant had challenged the suspension order and the initiation of departmental enquiry in a Writ Petition (C) No. 6027/2002 before the Hon'ble High Court of Delhi. In the said Writ Petition (C) "rule" was issued by the Hon'ble High Court of Delhi. In the meantime in 2002, as stated above, a charge memo was issued along with statement of allegations, list of documents and list of witnesses and applicant was given adequate opportunity of 7 days to submit his reply with respect to above charge memo dated 28.01.2002. He was also informed that in case reply to the said memo is not received, ex-parte enquiry will be initiated. Subsequently vide order dated 18.03.2002 an Inquiry Officer and Presenting Officer were appointed. It is noted in the inquiry report that after issuing the forged mutation letter dated 16.02.1993 with respect to which the departmental enquiry was initiated, for nearly 9 years the applicant did not report back to his duty and after the initiation of the departmental enquiry, the Inquiry Officer issued notice for appearance before the enquiry for attending the departmental enquiry on 24.06.2002 followed by reminder dated 10.07.2002. But, however, instead of participating in the departmental enquiry the applicant sent an application on 05.08.2002 stating his inability to attend the departmental enquiry on health ground from 15.07.2002 to 31.08.2002. Subsequently he further

requested for extension of time for 15 days. Hence, after giving reasonable notice the departmental enquiry proceedings were started on 25.09.2002. In the meantime, he requested for supplying the listed documents, copies of the complaints mentioned in the statement of allegation on the basis of which departmental enquiry was initiated. In reply to the said request, he was informed vide letter dated 25.11.2002 that all the listed documents will be supplied to him when he appears in the said enquiry proceedings but he did not turn up. By another notice dated 2.12.2002, the applicant was directed to appear before the inquiry officer on 18.12.2002. Again the applicant sought adjournment. In these circumstances, ex-parte enquiry was conducted. The relevant portions of the inquiry report regarding the above said instances are extracted below:-

> "The case of Sh.P.S.Sehgal, LDC was instituted before he Dy.DOI.-1 on 31.05.02. Broadly the charge against the CO is that he while functioning as LDC in A&C Deptt., S.P.Zone during the year 1992-93 issued a mutation letter dt. 26.3.92 in favour of M/s Aman Associated Pvt. Ltd. in do P.No.1-D2, Jhandewalan Extension, without obtaining any orders from the competent authority. He also issued a forged mutation letter dt. 16.02.93 in favour of Smt. Savitri Devi in r/o P.No. 7442/2, Ram Nagy, Pahar Ganj. One of the charges against him is that he has not deposited the amount received from Smt. Savitri Devi in the Mpl. Treasury and after committing such kind of misconduct he has been running unauthorisedly absent from duty w.e.f. 21.10.93 without prior intimation and proper sanction of leave from the competent authority. Hence, approximately 9 years have been passed and CO has not reported back on his duty.
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> The first notice for appearance was sent to the CO on 24.06.02 then the reminder was sent to him on 10.7.02. The CO instead of attending the inquiry office sent an application dt. 05.08.02 intimating therein that he is a patient of unstable hypertension and has been advised a complete bed rest from July, 15th to Aug. 31st and is unable to attend the inquiry. Further notice was sent to him on 05.08.02 and in reply to that notice also CO requested for extension of time for 15 days. Hence, the

next date of hearing was fixed for 25.09.02 at 11.00 a.m. and a notice in this regard was issued to him on 09.09.02. Since the CO was adopting dilatory tactics, a letter dated 17.10.02 was sent at his residential address through RAD. In reply to that letter, the CO again sent a letter through post wherein he has informed that he may be supplied with listed documents, copy of the complaints mentioned in the statement of allegation and the copy of the Vig. Report on the basis of which he has been charge sheeted. In his said reply dated 08.11.02, neither he mentioned about his illness nor some solid reasons behind his non appearance before the Inquiry Officer. In reply of the said letter of the CO, it was informed to him vide letter dated 25.11.02 that all the listed documents will be supplied to him when he will appear in the inquiry proceedings. In that letter he was also informed that as he is not turning up in the inquiry proceedings inspite of the information of the case against him, it has been decided that the case be proceeded against him ex-parte. Then another notice was sent to him on 2.12.02 along with copy of proceedings dt.2.12.02, with the direction to appear in the inquiry office on 18.12.02. C.O. then wrote another letter to the Dy. DOI-I on 11.12.02 requesting therein to give him adjournment of one week. However, instead of appearing on the said date, he alleged that the Inquiry Officer has a biased attitude and prejudiced mind.

Since the CO was not turning up in the inquiry office when the first witness Sh. Tej Ram, LDC turned up, his statement was recorded and the copy of proceedings of that day along with ex-parte notice to the CO was sent to him through RAD. When the C.O came to know that the Deptt. Has proceeded against him ex-parte and the departmental inquiry against him is under process, he started sending representations to the Commissioner/MD, Dy. Cm/S.P Zone and Addl. Cm..I/C Appellate Authority alleging therein that the Inquiry Officer is biased and is violating the procedure of natural justice and fair play. He has also alleged in his representation that the Inquiry Officer is not giving him a reasonable opportunity as per the provisions of Art.311 of the Constitution of India.

Unlike the Court of Law, the personal attendance of the CO is mandatory in departmental inquiries. As per Rule 7 of Rule 14 of CCS(CCA) Rules, 1965, as applicable to the employees of MCD, ”A Govt. servant shall appear in person before the Inquiring Authority on such day and at such time within 10 working days from the date of receipt by him of the article of charges and the statement of imputation of misconduct or misbehaviour, as the Inquiring Authority may, by a notice in writing, specify in this behalf, or even such further time, not exceeding 10 days, as the Inquiring Authority may allow.”

> The natural justice has its limits. The law requires that an accused employee must be afforded a reasonable opportunity to be heard. But, once it is done, he cannot be allowed to stultify the inquiry by non-cooperation, without sufficient cause. No doubt, in quasi-judicial proceedings, hearing one party in absence of other, usually violates the principle of natural justice but a party may loose his right by improper conduct. It is found that initially the CO took the plea of ill health and did not appear before the Inquiry Officer. Thereafter, he started to object simultaneous launching of Criminal and Departmental Proceedings and desired to have copies of the listed documents either through register post or through some special messenger, which is not permissible in the departmental proceedings. The record of inquiry proceedings shows that for the convenience of the CO various adjournments were given to the CO but he did not turn up.
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> It is pointed out here that various High Courts and even Supreme Court of India have held the ex-parte proceedings as justified under the circumstances as prevailing in the instant case. Therefore, when the CO failed to turn up before the Inquiry Officer on various dates in spite of numerous adjournments, the case was proceeded ex-parte against the CO. The CC has also alleged that the Inquiry Officer has a biased attitude and working with prejudiced mind. However, when the CO has not turned up before the Inquiry Officer even once, how the allegation of biased attitude or having prejudiced mind, can be levelled. Such type of allegations can be entertained by the Disciplinary Authority only when the CO attends the inquiry proceedings but in the instant case the CO has not turned up before the Inquiry Officer even once, as such ex-parte proceedings against the CO are fully justified in this case. However, required under rules, the copy of order sheets along with summons have been sent to the CO at various stages through RAD after institution of ex-parte proceedings."

In the ex-parte departmental enquiry, the Inquiry Officer after examining PW1 to PW4 and after taking into account all the documents brought on record came to the conclusion that charge no 1 and charge no 2 were proved and charge no.3 and charge no.4 were not proved vide his inquiry report dated 25.09.2003. The inquiry report was supplied to the applicant giving him 10 days time to make his representation and he submitted his

representation and after considering the enquiry report and the representation and hearing the applicant in person a penalty of reduction in time scale of pay by three stages for three years with cumulative effect was imposed on the applicant vide order dated 12.01.2010. The said order was confirmed in appeal vide order dated 28.06.2010. The Writ Petition (C) no 6027/2002 filed by the applicant was dismissed for default by the Hon'ble High Court of Delhi. The applicant filed an application for restoration along with an application for condonation of delay in filing the restoration application. The said applications were not pressed by he applicant and vide order dated 15.03.2017 the Hon'ble High Court gave a liberty to the applicant to file another Writ Petition as the applicant did not press his restoration application. The said order of the Hon'ble High Court is extracted below:

> "These applications are disposed of as not pressed in view of the fact that disciplinary committee has imposed the punishment of stoppage of three increments on the petitioners, and therefore, petitioner is at liberty to file a writ petition challenging the impugned order imposing the punishment of stoppage of three increments by including even those grounds which are stated in this writ petition as also any other additional grounds of facts and law as the petitioner deems fit."

Accordingly the applicant filed another Writ Petition (C) no.7826/2017 but by that time the New Delhi Municipal Corporation (NDMC) was brought within the jurisdiction of the Central Administrative Tribunal and hence the said Writ Petition was dismissed with liberty to the applicant to approach the Central Administrative Tribunal. The said order of the Hon'ble High Court dated 05.09.2017 is extracted below:-

> "The present petition has been filed by the petitioner challenging the orders passed by the erstwhile Municipal Corporation of Delhi, now North Delhi Municipal Corporation.

> As the North Delhi Municipal Corporation comes within the jurisdiction of the Central Administrative Tribunal, granting liberty to the petitioner to approach the Central Administrative Tribunal, the petition is dismissed as withdrawn."

The applicant accordingly filed this present OA before this Tribunal.

4. The counsel for the applicant vehemently and strenuously submitted that there is a delay of 9 years in initiating the departmental enquiry.

5. The counsel for the respondents equally vehemently and strenuously submitted that delay is because of the pendency of the criminal proceeding initiated vide FIR No. 87/94 before the criminal court and also because of the applicant not reporting back to duty for approximately 9 years as recorded in the inquiry report. In the facts and circumstances, we are of the view that the delay in initiation of the departmental enquiry is not fatal.

6. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of **K.L.Shinde** Vs. **State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but

that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word

> by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi** Vs. **UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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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:

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."

7. 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.

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

(A.K.Bishnoi)
Member (A)

(S.N. Terdal)
Member (J)

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